

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109

**COMMENTS
of
UNITED STATES CELLULAR CORPORATION**

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SUMMARY

In its Comments responding to the Commission's *Further Inquiry Public Notice* in the ongoing Universal Service Fund and Intercarrier Compensation rulemaking proceeding, U.S. Cellular focuses principally on one of the key challenges faced by the Commission in this rulemaking, and on the fact that the proposals that are the subject of the *Public Notice* would undermine the Commission's ability to meet this challenge. U.S. Cellular offers its own suggestions for effective universal service reform, and also addresses several of the specific issues and questions raised in the *Public Notice*.

THE CHALLENGE

Consumers and businesses increasingly demand, and rely upon, mobile wireless broadband services. This fact, which is demonstrated by a variety of studies showing the growing importance and popularity of mobile broadband, applies to consumers and business across the country, including those in rural America. Moreover, the importance of bringing mobile broadband to rural areas has been heightened by the toll that the Nation's economic problems is taking in these areas.

Many rural communities are reeling from the effects of the country's ongoing economic downturn, and they face the difficult task of holding on to existing businesses and of trying to attract new businesses that could pump jobs and revenues into these communities' ailing economies. In these circumstances, the availability of advanced mobile wireless networks and services has become a central issue.

The challenge for the Commission—a challenge that is fixed in the Communications Act of 1934—is to develop universal service reforms that ensure that rural consumers and businesses have access to mobile broadband that is comparable to access available in urban areas. In urban

areas, mobile wireless services make up approximately 75% of the broadband marketplace, and new mobile applications and platforms are driving economic opportunities.

Currently, rural areas lack sufficient access to networks capable of delivering high-quality mobile wireless broadband services, which is preventing rural consumers and businesses from taking advantage of mobile broadband applications and platforms available in urban areas. In order to turn this situation around—and pursue the wireless broadband goals established by President Obama—the Commission should ensure that competitive eligible telecommunications carriers involved in deploying mobile wireless networks in rural areas have equitable access to sufficient universal service funding to enable them to help accomplish these goals.

THE PROBLEM

The proposals from various stakeholders referenced in the *Public Notice* recommend new support mechanisms and other universal service rules and policies that would brush aside mobile broadband as though it were irrelevant to the communications needs and demands of rural consumers and businesses.

The proponents of these proposals make the unstated assumption that there is no need to craft new universal service mechanisms that operate in a competitively neutral manner. They also evidence no concern that the effect of their proposals would be to deprive rural consumers and businesses—many of whom contribute to USF as wireless service subscribers—of the benefits of the universal service program that Congress intended these consumers and businesses to receive.

The proposal put forward by price cap carriers (the “ABC Plan”) amounts to a blueprint for a heist, having the effect of shifting approximately \$1 billion in universal service support from wireless to wireline carriers. The proposal advances virtually no policy justification or economic rationale for this approach, and seems to be grounded in the premise that universal service

reform should not only preserve the funding *status quo*—which sends the lion’s share of support to wireline carriers—but should also be seized as an opportunity to tip the funding balance even further in the direction of wireline carriers. The price cap carriers’ proposal would also lock in approximately \$42 billion in Connect America Fund support to wireline carriers over a ten-year period, paying no heed to (or perhaps anticipating) the strong likelihood that demand for services delivered by wireline technologies will continue to dwindle during that period.

It bears noting that AT&T—one of the sponsors of the price cap carriers’ proposal—would be a major beneficiary of the proposal. As noted, the proposal would increase wireline carriers’ universal service disbursements by approximately \$1 billion annually. AT&T, which currently receives USF support for its wireline operations in states such as Arkansas, Kansas, Minnesota, Missouri, and South Dakota, would receive a significant share of this increased funding. It would seem ill-advised to revise USF support mechanisms in a manner that boosts the support of a company like AT&T, which currently has a dividend yield of 6.15%.

The recommendation made in the price cap carriers’ proposal to increase funding levels for wireline ETCs, coupled with proposals to cap overall CAF funding, put competitive ETCs on the short end of a zero-sum funding game. Support for mobile wireless broadband would be limited to \$300 million annually by some of the proposals made to the Commission and to \$500 million annually by another proposal, which is a small slice of overall budgets suggested in the proposals that range from \$4.2 billion to \$4.5 billion annually. One of the proposals even suggests that support for mobile wireless broadband should be phased in to help stay within the proposed cap.

The result of the various wireline proposals for universal service reform would not be a good one for consumers and businesses in rural America. Rural areas would be left without ade-

quate deployment of advanced mobile broadband infrastructure, undercutting any opportunity for rural consumers and businesses to access mobile broadband services comparable to those available in urban areas. This outcome, which would flow from adoption of the wireline proposals, would have significant negative repercussions for economic development throughout rural America.

THE SOLUTION

U.S. Cellular has proposed a very straightforward solution to the problem posed by the wireline proposals:

- Establish separate CAF funding mechanisms for wireline and mobile broadband networks.
- Ensure sufficient levels of support for both funds.
- Disburse funding through the use of a forward-looking economic cost model.
- Make funding within the two separate funds fully portable.

The use of separate funds would enable the Commission to give appropriate focus to supporting the deployment of mobile broadband networks, provided, of course, that the Commission also takes steps to ensure sufficient levels of funding. U.S. Cellular, for example, has proposed that the Commission should support a separate mobile broadband fund with an annual budget of at least \$1.3 billion (which is approximately the size of current competitive ETC high-cost support disbursements, capped at 2008 levels).

Using an economic cost model would promote efficient use of CAF support and would provide the advantage of preserving competition as a driver of consumer benefit in rural areas. Making funding fully portable within each separate fund would enhance the level of consumer choice and promote the efficient use of CAF support.

OTHER ISSUES

U.S. Cellular addresses in its Comments several of the specific issues and questions raised in the *Public Notice*, including the following:

Anticipating Demand Growth in Cost Models.—U.S. Cellular believes it would be efficient to develop cost models that include costs relating to the design and operation of broadband networks that are able to accommodate demand for higher bandwidth over a five-year period.

Right of First Refusal.—The Commission should not adopt proposals to give incumbent wireline carriers the preemptive right to accept or refuse CAF funding in their service areas, since such a mechanism would not be competitively neutral, it would not contribute to the efficient use of CAF funding, and it ultimately would harm consumer welfare.

Accounting for the Cost of Providing Both Broadband and Voice Services.—U.S. Cellular supports adapting the CostQuest Broadband Analysis Tool so that it is able to project network costs unique to providing “plain old telephone service,” so long as accommodating funding for circuit-switched networks does not inadvertently result in perpetuating support for these outmoded networks.

Federal-State Partnerships; the Role of the States.—The Commission should adopt uniform universal service rules and requirements that apply consistently throughout all the states. This would avoid the expense and complexity that would result from requiring funding recipients’ customer care personnel, engineers, executives, managers, and sales associates to learn and comply with more than one set of regulatory requirements.

The *Public Notice* seeks comment on the role of the states in the context of both universal service and ICC reform, and U.S. Cellular is concerned that a proposal made by the Commission—to use single-winner reverse auctions as a means of disbursing CAF support—would usurp

the authority of state commissions under the Communications Act to designate more than one ETC in a service area.

Rate-of-Return Reform.—The Commission should act expeditiously to eliminate reliance on rate-of-return mechanisms for the disbursement of universal service support, because any continuing reliance on the current rate of return and an embedded cost methodology as components in calculating USF support is inefficient. U.S. Cellular also suggests that the Commission should issue a further rulemaking notice to initiate a process for represcribing the current authorized rate of return, and should complete any such proceeding before taking any final action to transform its USF and ICC rules.

Providing CAF Support in Areas with Unsubsidized Competitors.—The Commission should avoid reducing incumbents’ support in areas purportedly served by unsubsidized carriers because any attempt to eliminate an incumbent’s support associated with the “competitive” portion of its service area would likely have adverse consequences for consumers in the remaining areas of the incumbent’s service area. A better approach would be to focus on study area redefinition and disaggregation within study areas.

Rate Benchmarks for Residential Voice Service.—The Commission should establish a rate benchmark and, if a carrier’s rates are below the benchmark, then the carrier’s level of support should be the difference between the revenues the carrier received from its actual rates and the revenues the carrier would have received pursuant to the benchmark rates. This would help to ensure that universal service support does not subsidize carriers with artificially low rates.

The Transition Proposed in the ABC Plan.—The price cap carriers recommend a transition period that would phase down existing funding beginning on July 1, 2012, and ending on July 1, 2016, when the CAF would be fully funded. U.S. Cellular conceptually supports this pro-

posals (except that it favors a five-year phase down) assuming legacy support currently received by competitive ETCs would not be reduced until new and robust wireless CAF funding mechanisms have been implemented and funding disbursements have begun. The approach thus would help to avoid the risk that there is not sufficient funding for the accelerated deployment of broadband networks.

Phasing Down Per Minute ICC Charges.—U.S. Cellular conceptually supports the proposal in the ABC Plan to phase down per-minute ICC terminating rates to a uniform default rate of \$0.0007 per minute by July 1, 2017. Moving to a default rate near zero is appropriate because consumers have been harmed by the above-cost pricing of current ICC charges and by system-gaming tactics criticized by the Commission.

Access Revenue Recovery.—The Commission should not adopt a proposal in the ABC Plan for a transitional access replacement mechanism for price cap incumbents that have exceptionally large reductions in ICC revenue. Such an approach would not be competitively neutral, since it would provide additional support to a single class of carriers.

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**COMMENTS
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UNITED STATES CELLULAR CORPORATION**

United States Cellular Corporation (“U.S. Cellular”), by counsel, hereby submits these Comments, pursuant to the Public Notice issued by the Wireline Competition Bureau in the above-captioned proceeding.¹ The *Public Notice* seeks comment on the America’s Broadband

¹ *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, DA 11-1348 (rel. Aug. 3, 2011), 76 Fed. Reg. 49401 (Aug. 10, 2011) (“*Public Notice*” or “*Notice*”), Erratum (rel. Aug. 8, 2011). The due date for comments in response to the *Public Notice* is August 24, 2011. See *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal*

Connectivity Plan (“ABC Plan”),² the RLEC Plan,³ the Joint Letter,⁴ the State Member Plan,⁵ as well as certain other proposals. The ABC Plan, RLEC Plan, and Joint Letter are referred to collectively in these Comments as the “Wireline Industry Proposals”.

U.S. Cellular provides Personal Communications Service and cellular services in 44 Metropolitan Statistical Areas, 100 Rural Service Areas, one Major Trading Area, and numerous Basic Trading Areas throughout the Nation. U.S. Cellular has received eligible telecommunications carrier (“ETC”) status and is currently receiving high-cost support for its operations in Illinois, Iowa, Kansas, Maine, Missouri, Nebraska, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Tennessee, Virginia, Washington, West Virginia, and Wisconsin.

I. INTRODUCTION.

U.S. Cellular commends the Commission for focusing in the *Public Notice* on the issue of providing separate universal service funding for fixed and mobile broadband.⁶ Establishing sepa-

Service Support, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Order, DA 11-1374 (rel. Aug. 8, 2011) (denying various motions for extension of the deadlines for comments and reply comments).

² Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream (“Price Cap Carriers”), to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.* (filed July 29, 2011).

³ Comments of National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association (“NTCA”), Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”), and Western Telecommunications Alliance (“WTA”) (the “Joint Rural Associations”), WC Docket No. 10-90 *et al.* (filed Apr. 18, 2011) (“RLEC Plan”).

⁴ Letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn, Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90 *et al.* (filed July 29, 2011) (“Joint Letter”).

⁵ Comments by the State Members of the Federal-State Joint Board on Universal Service (“State Members”), WC Docket No. 10-90 *et al.* (filed May 2, 2011) (“State Member Plan”).

⁶ See *Notice* at 2.

rate and sufficient funding for mobile broadband deployment would be in keeping with the Commission's recognition that mobile broadband is a critical component of our Nation's economic future in rural areas.⁷ The marketplace continues to signal strong consumer demand for mobile broadband services.

For example, an economic analysis included as part of the ABC Plan subscribes to the widespread view that consumers are continuing to flock to wireless services. Citing survey results contained in the CDC Wireless Substitution Report,⁸ Professor Jerry Hausman concludes that "it is now clear that a significant shift away from wireline and toward wireless voice services has occurred[.]"⁹ and explains that "[g]enerally, consumers can be expected to purchase services based on their perception of the services that provide the greatest benefit (consumer welfare) at the lowest relative cost (efficiency)."¹⁰

⁷ The Commission has observed, for example, that:

Mobile voice and mobile broadband services are playing an increasingly prominent role in modern telecommunications. Given the important benefits of and the strong consumer demand for mobile services, ubiquitous mobile coverage must be a national priority.

Connect America Fund, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4638 (para. 241) (2011) ("*CAF NPRM*"), *quoted in* U.S. Cellular Comments, WC Docket No. 10-90 *et al.* (filed Apr. 18, 2011) ("U.S. Cellular Comments"), at 3.

⁸ Stephen J. Blumberg & Julian V. Luke, "Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2010, National Center for Health Statistics, Centers for Disease Control and Prevention (rel. June 8, 2011) ("CDC Wireless Substitution Report"). Findings made in the CDC Wireless Substitution Report are discussed in Section III.A., *infra*.

⁹ ABC Plan, Attach. 4 (Jerry Hausman, "Consumer Benefits of Low Intercarrier Compensation Rates") ("*Hausman Paper*"), at 7.

¹⁰ *Id.*

There is every reason to conclude that mobile networks will provide the leading consumer platform for accessing broadband content,¹¹ especially if regulatory policies continue to foster mobile broadband deployment. Smart phones, tablets, and other new mobile devices will continue to proliferate, and businesses, schools, and consumers will continue to pursue ways to use these new mobile tools to increase productivity, improve education, deliver and access media *everywhere that coverage is sufficient to permit our citizens to use these devices everywhere they live, work, and travel.*

As U.S. Cellular has repeatedly indicated, in rural, high-cost areas, the barrier to accessing these tools is coverage.¹² High-cost support has enabled U.S. Cellular to construct cell sites in scores of rural communities that would not otherwise have high-quality service, such as Fossil, Oregon, and Bunker Hill, Illinois. U.S. Cellular's capacity to deliver 4G Long-Term Evolution ("LTE") services in rural areas is increased because support has contributed to the network building blocks—site acquisition, towers, backhaul facilities, shelters, back-ups, switch upgrades, and more.

¹¹ Observing that "the central role and implications of the mobile communications revolution [have] not been adequately recognized in public policy, above all, universal service policy[.]" Mark Cooper has concluded that "[i]n the long term, mobile computing will be at the center of 21st century communications. In the short term, it provides more than adequate functionality for the communications uses that constitute the vast bulk of daily communications activity." Mark Cooper, Director of Research, Consumer Federation of America, "The Central Role of Wireless in the 21st Century Communications Ecology: Implications for a Pragmatic, Progressive View of Universal Service Reform," FCC, Intercarrier Compensation/Universal Service Fund Reform Workshop, Apr. 27, 2011, accessed at <http://www.fcc.gov/events/intercarrier-compensationuniversal-service-fund-reform-workshop>, cited in NASUCA Reply Comments, WC Docket No. 10-90 *et al.* (filed May 23, 2011) at 112 ("NASUCA Reply Comments"). In Dr. Cooper's view, "[w]ireless will deliver the most valuable form of 21st century communications to the largest number of people in the shortest amount of time at the lowest cost." *Id.*

¹² See, e.g., Letter from David A. LaFuria, Counsel to U.S. Cellular, to Marlene H. Dortch, FCC, WC Docket No. 10-90 *et al.*, (filed Aug. 6, 2011) ("U.S. Cellular August 6 Ex Parte"), at 2 (noting that "[w]ithout a robust mobile broadband ecosystem in our nation's rural and high-cost areas, obvious and substantial economic development benefits will be delayed or denied. U.S. Cellular and many other rural

The National Broadband Plan¹³ charted a bold course to bend the existing universal service program toward broadband deployment. And, over the past several years, President Obama and Chairman Genachowski have made clear that mobile broadband is a key to the Nation's economic development and leadership in the coming decades. In his 2011 State of the Union address, President Obama called for the deployment of "the next generation of high-speed wireless coverage to 98 percent of all Americans"¹⁴ within five years. Chairman Genachowski has repeatedly explained to the Nation how critical mobile broadband is for job creation and economic development.¹⁵

II. OVERVIEW OF THE WIRELINE INDUSTRY PROPOSALS AND THE STATE MEMBER PLAN.

There is an enormous disconnect between the Wireline Industry Proposals and the State Member Plan, and the facts on the ground. As discussed below in this Section, at a time when

wireless carriers have been using support to construct new cell sites that provide vital coverage in rural communities, sites that are broadband-ready from day one.”).

¹³ Omnibus Broadband Initiative, FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN (Mar. 16, 2010) (“Broadband Plan” or “NBP”).

¹⁴ President Barack Obama, State of the Union Address, Jan. 25, 2011, accessed at http://www.pbs.org/newshour/bb/politics/jan-june11/sotutranscript_01-25.html. The President emphasized that:

This isn't just about a faster internet and fewer dropped calls. It's about connecting every part of America to the digital age. It's about a rural community in Iowa or Alabama where farmers and small business owners will be able to sell their products all over the world. It's about a firefighter who can download the design of a burning building onto a handheld device; a student who can take classes with a digital textbook; or a patient who can have face-to-face video chats with her doctor.

Id. See President Barack Obama, Remarks by the President on the National Wireless Initiative in Marquette, Michigan, at 6 (Feb. 10, 2011) (unpaginated transcript) (noting that “[f]or our families and our businesses, high-speed wireless service [is] how we'll spark new innovation, new investment, new jobs”).

¹⁵ Just this month in Indiana, the Chairman noted that “[b]roadband is the indispensable infrastructure of our 21st century economy[.]” and that “[i]nvestment in mobile networks— . . . measured in the billions— was up 20% [in 2010], and that trend is continuing in 2011 as providers have accelerated the deployment of 4G.” FCC Chairman Julius Genachowski, Remarks on Plan To Create 100,000 New Broadband-Enabled Jobs, Jeffersonville, Ind., Aug. 4, 2011 (“Genachowski Speech”), at 1, 3.

investment in mobile broadband platforms should be accelerating in rural areas, when there is so much work to be done to jump to 4G platforms that will deliver enormous economic development benefits to our rural citizens, the Wireline Industry Proposals and the State Member Plan not only cut off existing funding,¹⁶ but they essentially place *zero* public dollars into the plan for mobile broadband.¹⁷ At a time when the President, the Chairman, and other Commissioners are fully aware of the benefits of mobile broadband to our economy, this disconnect must represent an unacceptable policy outcome.

A. The Wireline Industry Proposals.

1. The ABC Plan.

As U.S. Cellular understands the ABC Plan, it contains the following core components:

- \$2.2 billion per year would be provided as support to large, price cap carriers, an increase of over \$1 billion annually, despite the fact that these are some of the most profitable and cash-rich companies in the telecommunications industry. U.S. Cellular also notes that price cap carrier Verizon Communications, with a dividend yield currently over 5%, recently accepted a \$5.5 billion special dividend from Verizon Wireless.¹⁸ Meanwhile, AT&T is proposing a \$39

¹⁶ U.S. Cellular notes that the ABC Plan does appear to make some provision for maintaining sufficient levels of funding for ETCs during a transition period. U.S. Cellular supports such an approach. See Section III.I., *infra*. The State Member Plan attempts “to avoid any possible rate shocks in areas where support is declining” by proposing a gradual transition from old to new POLR support levels. This mechanism, however, would provide little assistance to wireless competitive ETCs, since, as discussed below in the text, it is unlikely they would receive any appreciable portion of POLR funding under the State Member Plan framework.

¹⁷ The proposed funding targeted for mobile broadband (up to \$300 million in the ABC Plan and the RLEC Plan, and up to \$500 million in the State Member Plan), are considerably less than the current \$1.3 billion capped competitive ETC fund. See U.S. Cellular July 29 Ex Parte at 5.

¹⁸ See Paul Sonne, *Verizon Wireless To Pay Big Dividend*, WALL ST. J., July 29, 2011, accessed at <http://online.wsj.com/article/SB10001424053111903635604576474662914183744.html>.

billion takeover of T-Mobile, a use of cash to purchase a carrier focused almost exclusively in the Nation's urban and suburban areas.

■ Price cap carriers would receive a right of first refusal (“ROFR”), enabling them to access support in approximately 80% of their study areas without competition, locked in for a ten year period with minimal accountability. Carriers are free to select where they will serve with available funding, and to leave islands of unserved areas for other technologies to reach. Allowing an ROFR will reverse over a decade of Congressional and Commission focus on consumers, rather than carriers, as the beneficiaries of support. The ability of consumers to choose the service that best suits their needs has always been, and must continue to be, a cornerstone of Commission universal service policy. Carriers exercising the ROFR will decide what technology is deployed in rural areas, even when the carrier's technology choice may not be an efficient use of federal high-cost support, or even if that technology is not what consumers in their service area want.

■ Price cap carriers expect to be deregulated, including the elimination of carrier-of-last-resort (“COLR”) obligations. Although the ABC Plan is not clear, these carriers obviously expect to be regulated as information service providers under Title I of the Communications Act of 1934 (“Act”), despite the fact that universal service is a Title II program. The Commission is authorized to fund common carriers providing telecommunications service pursuant to Title II, not information service providers providing service under Title I.¹⁹ Unless a carrier agrees to a

¹⁹ See, e.g., U.S. Cellular Reply Comments, WC Docket No. 10-90 *et al.* (filed May 23, 2011) (“U.S. Cellular Reply Comments”) at 7 (emphasis in original) (footnote omitted) (noting that “the Commission would have statutory authority to provide universal service [support] for broadband *only* to the extent that broadband is provided as a telecommunications service by telecommunications common carriers”).

common carrier regime, it is not qualified to be designated as an eligible telecommunications carrier pursuant to Section 214 of the Act.²⁰

■ Price cap carriers would remove support from all areas where an unsubsidized carrier is already providing service. However, if an unsubsidized carrier were to enter their market after the program is implemented, they would continue to be locked into receiving ten years of support payments, no matter how the market developed. A new entrant would not be able to access funding to improve services, even if consumers preferred the new entrant's offerings. That is exactly the problem that Congress attempted to solve in the Telecommunications Act of 1996,²¹ when it made support available to newcomers. It reduced the barrier to competition and consumer choice that implicit support mechanisms previously represented. The ABC Plan reconstructs this barrier for ten more years. Put simply, this is not competitively neutral and once incumbents are locked in, their marketplace advantage will soon become insuperable.²²

■ The “Big Two”—AT&T and Verizon—are pushing for intercarrier compensation (“ICC”) reductions to \$0.0007 per minute, which would greatly reduce their costs of terminating

²⁰ See, e.g., Cellular South, Inc., Comments, WC Docket No. 10-90 *et al.* (filed Apr. 18, 2011) at 9-28; RLEC Plan at 82 (indicating that “the RLEC Plan contemplates distributions only to telecommunications carriers to support the provision of broadband transmission services offered on a common carrier basis”).

²¹ Pub. L. No. 104-104, 110 Stat. 56 (1996) (“1996 Act”).

²² The Supreme Court has explained the marketplace advantages that can accrue to incumbent exchange carriers:

It is easy to see why a company that owns a local exchange . . . would have an almost insurmountable competitive advantage not only in routing calls within the exchange, but, through its control of this local market, in the markets for terminal equipment and long-distance calling as well. A newcomer could not compete with the incumbent carrier to provide local service without coming close to replicating the incumbent's entire existing network The incumbent company could also . . . place conditions or fees (called “access charges”) on long-distance carriers seeking to connect with its network. In an unregulated world, another telecommunications carrier would be forced to comply with these conditions, or it could never reach the customers of a local exchange.

Verizon Communications Inc. v. FCC, 535 U.S. 467, 490-91 (2002) (footnote and citation omitted).

wireless traffic. At the same time, they propose a so-called “access replacement” mechanism that would provide exclusive support for the wireline side of their businesses to make up for the “loss” of ICC revenues. While fulfilling congressional directives that the Commission move implicit support from carrier rates into an explicit universal service fund, the access replacement mechanism would contravene the Commission’s core principle of competitive neutrality which requires all explicit support be made available to all eligible carriers, not reserved for one class of carrier.²³

- To summarize, price cap carriers double their funding, they are freed from competition for funding even if a newcomer succeeds in the market, they are freed from regulation, including COLR obligations, they get funded even in high-revenue areas, they may continue paying substantial dividends, and, the Big Two reduce their intercarrier costs on wireless while the wireline side gets an exclusive safety net support mechanism.

- Under the ABC Plan, consumers will contribute \$20 billion over ten years, to be invested in a less than optimum broadband service (i.e., service providing a minimum actual

²³ The Commission has explained that:

[F]ederal universal service high-cost support should be available and portable to all eligible telecommunications carriers, and . . . that the same amount of support . . . received by an incumbent LEC should be fully portable to competitive providers. A competitive eligible telecommunications carrier, when support is available, shall receive per-line high-cost support for lines that it captures from an incumbent LEC, as well as for any “new” lines that the competitive eligible telecommunications carrier serves in high-cost areas. To ensure competitive neutrality, we believe that a competitor that wins a high-cost customer from an incumbent LEC should be entitled to the same amount of support that the incumbent would have received for the line Unequal federal funding could discourage competitive entry in high-cost areas and stifle a competitor's ability to provide service at rates competitive to those of the incumbent.

Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20480 (para. 90) (1999) (footnotes omitted) (“*USF Ninth Report and Order*”), *reversed in part and remanded in part*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001).

downstream bandwidth of 4 Mb/s and a minimum actual upstream bandwidth of 768 kb/s (“4 Mb/768k service”)), which reaches only 4 million additional subscribers, assuming all promises are kept. This is a great proposal for these carriers, but a raw deal for rural citizens, and therefore it must be rejected.

2. The RLEC Plan and the Joint Letter.

Based on U.S. Cellular’s review of the RLEC Plan and the Joint Letter, their core components can be summarized as follows:

- While the RLEC Plan cautions against capping high-cost support at current levels,²⁴ the Joint Letter proposes an annual cap on rate-of-return carrier funding of between \$2 billion and \$2.3 billion through 2017.²⁵ The Joint Letter “does not envision any automatic extension of that budget beyond the [five-year] budget period.”²⁶

- Rural incumbent LECs would remain subject to rate-of-return regulation,²⁷ despite widespread agreement among economists (and the authors of the Broadband Plan) that this me-

²⁴ RLEC Plan at 89.

²⁵ Joint Letter at 2.

²⁶ *Id.*

²⁷ “[T]he RLEC Plan contemplates development of a cost-based, ‘evolved RoR’ funding mechanism specifically for RLECs that operates as a separate but complementary component of the overall CAF.” RLEC Plan at 27. Recognizing “potential inefficiency” in current High-Cost Loop Support (“HCLS”) mechanics, *id.* at 9, the Joint Rural Associations propose certain “constraints on recovery of costs from federal USF mechanisms” *Id.* at 29. Specifically, the Joint Rural Associations suggest adoption of a prospective investment limitation that would “tie the amount of an RLEC’s recovery of prospective investment that qualifies for high-cost support to the accumulated depreciation in its existing loop plant, which would serve as an estimate for the extent to which its existing facilities have reached the end of their economic life.” *Id.* at 9. *See* RLEC Plan, App. A (Vantage Point, “Proposal for Allowed Loop Plant Capital Expenditures for High Cost Funding of Future Loop Plant Investments,” Apr. 2011). While the Joint Rural Associations’ concerns regarding the inefficiencies of existing support mechanisms are laudable, the fact is that it is past time for the Commission to stop throwing good money after bad, and instead to move its transformed CAF support mechanisms away from a broken and discredited rate-of-return regime.

thodology of “the more you spend, the more you get” is inefficient. It is a system that must end because it soaks up scarce funds that could be put to more efficient and proper use.

■ The RLEC Plan’s proposed ICC reforms place an emphasis on giving state commissions discretion regarding the unification of interstate and intrastate switched access rates,²⁸ which the plan suggests should be done on a carrier-by-carrier basis, and on avoiding “bill and keep” or any low uniform rate applicable to all carriers. The Joint Rural Associations suggest that the Commission should establish “sensible, well-defined stages” to a new ICC regime, complete with “pause points” before any further ICC reforms are implemented. A key component of the RLEC Plan’s approach is the establishment of “restructure mechanism” to ensure that rural LECs recover their lost access revenues.²⁹

■ The RLEC Plan’s approach to ICC reform, however, overlooks (1) a bill-and-keep regime or a unitary rate near zero accurately reflect the fact that both parties to a call benefit from the call and therefore “cause” the costs associated with the call, (2) bill-and-keep or a very low unitary rate would accurately reflect the fact that modern switches used to terminate calls do not generate traffic sensitive costs, and (3) the current ICC rate structure has the adverse effect of

²⁸ If the Commission is inclined to take this approach, then U.S. Cellular agrees with MetroPCS that “the Commission [must] recognize the importance of federal direction to any intercarrier compensation reform program that grants states discretion in their actions. To the extent that the Commission relies on states to reform intercarrier compensation, the Commission must offer robust guidance based on a well-articulated Commission methodology.” MetroPCS Communications, Inc. (“MetroPCS”), Comments, WC Docket No. 10-90 *et al.* (filed Apr. 18, 2011), at 20. MetroPCS concluded that “any interim rate must be placed upon an annual stepped-down plan to get to bill-and-keep within four years. Allowing state commissions to set rates that are not cost-based would be contrary to the public interest.” *Id.* at 20-21.

²⁹ The restructure mechanism would “be calculated as the difference between each carrier’s intrastate switched access revenues and revenues obtained by charging access minutes at the interstate rate.” RLEC Plan at 14.

discouraging carriers “from investing in IP technology in order to continue collecting ICC charges for terminating TDM [Time Division Multiplexing] traffic through circuit switches.”³⁰

■ The Joint Letter favors a different approach to ICC reform, advocating a reduction in certain terminating switched access and reciprocal compensation rates to \$0.0007 per minute.³¹ Reductions would be phased in over six years for price cap carriers and over eight years for rate-of-return companies, subject to the caveat that all reductions in ICC would be deferred if it is determined that funding in any given year will be insufficient “to provide the necessary levels of high-cost support and/or intercarrier compensation restructuring for carriers”³²

B. The State Member Plan.

Based on its review, U.S. Cellular understands the State Member Plan to contain the following core components:

■ The State Member Plan suggests abandoning the use of reverse auctions, and instead creating a Provider of Last Resort (“POLR”) Fund, a Wireline Broadband Fund, and a Mobility Fund, each with separate purposes, mechanisms, and budgets.³³ The POLR Fund, which is intended to serve as a cost-based support mechanism for carriers with COLR obligations, would target support to the “high-cost sectors” of a study area, considering costs and revenues from regulated voice operations and broadband services.

■ Rural incumbent LECs would be able to elect the use of embedded costs as the basis for their funding disbursements. The rate of return would be lowered to 8.5% and a cap would be

³⁰ T-Mobile USA, Inc. (“T-Mobile”) Reply Comments, WC Docket No. 10-90 *et al.* (filed May 23, 2011), at 10 (footnote omitted).

³¹ Joint Letter at 3.

³² *Id.* at 2-3.

³³ State Member Plan at iii, 29-78.

imposed. The cap would be based on either engineering or statistical models and would be similar to the existing corporate operations cap. Rate of return principles would be used “to calculate a maximum allowable support level for [a rural carrier’s] entire study area.”³⁴ The State Member Plan also would provide for the replacement of lost revenues resulting from federal or state ICC policy changes, phased down over a five-year period. The problem with the State Member Plan approach is that a funding mechanism based on embedded costs and rate-of-return principles provides funding recipients with the wrong incentives and results in inefficient and inflated funding disbursements, to carriers offering services that consumers are abandoning.

■ The Mobility Fund proposed in the State Member Plan would be capped at \$500 million per year, and would be funded “from reallocation of [a specific portion of] support currently given to CETCs under the equal support rule.”³⁵ The funding would start at \$50 million per year and increase to an annual level of \$500 million in the sixth year. Funding would be available for grants to finance the construction of wireless telecommunications towers. Instead of using an auction mechanism, the FCC would allocate funding to the states, and state commission would decide whether to grant or deny individual ETC funding applications. The Mobility Fund would “be used to fund [50 percent of] the debt cost of new construction.”³⁶ Carriers would be required to obtain private funding for the other half of a project’s capital costs, and grant awards would be paid out over ten years.³⁷

■ Limiting the size of the Mobility Fund is a major flaw in the State Member Plan, since it would not be competitively neutral, and would be at odds with findings made by the Commis-

³⁴ *Id.* at 56.

³⁵ *Id.* at 68.

³⁶ *Id.* at 71.

sion and others regarding the growing importance of, and demand for, mobile broadband services. As discussed below, mechanisms proposed in the State Member Plan for POLR Fund disbursements make it highly unlikely that any significant share of POLR support would be awarded to wireless carriers.

- The Wireline Broadband Fund proposed by the State Member Plan would be structured in a manner similar to the Mobility Fund, with a \$500 million annual funding level phased in over six years, and with funding allocated to the states for grants awarded by state commissions. Funding would be available for the debt cost of new construction.

- Although wireless competitive ETCs apparently would be eligible for POLR support under the State Member Plan, the deck would be stacked against them. The State Member Plan appears to endorse the Commission’s proposal to limit funding to only one recipient in a service area, and the State Member Plan further indicates that state regulatory commissions should initially re-designate the incumbent LEC for purposes of receiving POLR support.³⁸ This proposed approach would not be consistent with the Commission’s competitive neutrality principle.

- Total fund size for high-cost support would be limited to \$4.2 billion per year. The State Member Plan stresses that “[f]unding for the two grant programs, Mobility and Wireline Broadband, should not be so large as to prevent sufficient funding for the POLR Fund”³⁹

Apart from the merits of imposing a cap on overall CAF funding,⁴⁰ there is no credible policy

³⁷ *Id.* at 72.

³⁸ The State Member Plan further states that, “[i]n a very few cases where a CETC has overbuilt [incumbent LEC] facilities over a wide area, the State commission should, on petition, conduct a fact-specific proceeding to determine whether the ILEC or the CETC should be designated as the single supported carrier.” *Id.* at 139.

³⁹ *Id.* at 12.

⁴⁰ This issue is discussed in Section III.I., *infra*.

basis, in U.S. Cellular’s view, for reserving only \$500 million of this amount for mobile broadband, while walling off wireless competitive ETCs from any realistic opportunity to compete for POLR funding.

C. Moving Universal Service Funding Beyond the Status Quo.

Taken together, the Wireline Industry Proposals and the State Member Plan represent the *status quo*, only with more funding directed exclusively to wireline technology. It would be difficult to expect the wireline industry to propose a significant investment in a competing technology, and the Wireline Industry Proposals compound problems for competitive carriers and their customers by including deregulation of incumbent LECs as a bonus.⁴¹ These proposals are so poorly constructed that they actually threaten the Commission’s ability to achieve near-term reform.

While various industry groups and other stakeholders disagree on many things, there is no disagreement as to how important it is to invest in the Nation’s broadband infrastructure. Moreover, all carriers that are committed to serving rural America agree that the universal service fund is a critical component of accelerating access to broadband in these areas. Accordingly, while it is politically difficult to increase the size of the high-cost fund to accommodate the Nation’s needs, in the near term that is an option that must be considered. Thoughtful reform of the contribution mechanism⁴² will spread obligations more equitably and touch more users who ben-

⁴¹ See ABC Plan, Attach. 1, at 13. The RLEC Plan provides that, if the Commission has jurisdictional authority to do so, it should completely release incumbent LECs (or other support recipients) from COLR responsibilities for any of their services areas in which they do not receive any CAF support. RLEC Plan at 55.

⁴² The Commission recently indicated that “after reforming the distribution side of the universal service equation this fall, we will move soon to launch, and subsequently conclude, a proceeding to restructure the universal service contribution mechanism, which is equally in need of reform.” Julius Genachowski, Michael Copps, Robert McDowell, & Mignon Clyburn, “Bringing Broadband to Rural America: The

efit from the Nation's current and future networks, providing advanced services that are critical to the Nation's economy.

U.S. Cellular notes that in 2001, the Commission increased the size of the fund by \$1.26 billion over five years when it modified rules for rural wireline carriers.⁴³ Finding that such an increase would be, "modest, ranging from two-tenths to four-tenths of one percent" the Commission concluded that it was a worthy price for having a support mechanism that is sufficient for rural incumbent LECs.⁴⁴

If the Commission believes that a similar situation exists, namely, that price cap incumbent LECs should receive an additional \$1 billion in funding as a result of CAF reform, then it should articulate that clearly and provide funding for it in the form of a larger fund. It is wrong to remove support from the wireless industry, then claim that the fund size would have to be increased to accommodate the needs of wireless consumers. ***In fact, the ABC Plan represents the theft of support from one class of carrier, for the benefit of another.*** That theft is from wireless consumers, who pay into the fund but will not see the benefits that Congress intended to deliver.

These benefits are both substantial and critical to the Nation's economic growth. A recent report by Deloitte suggests that mobile broadband investment between 2102 and 2016 could fall in a range between \$25 billion and \$53 billion.⁴⁵ Applying a GDP multiplier, Deloitte estimates

Home Stretch on USF and ICC Reform," Official FCC Blog (posted Aug. 8, 2011) ("FCC Blog"), accessed at <http://www.fcc.gov/blog/bringing-broadband-rural-america-home-stretch>.

⁴³ See Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket No. 96-45, CC Docket No. 00-256, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (2001) ("RTF Order").

⁴⁴ *Id.* at 11258 (para. 28).

⁴⁵ Deloitte Consulting LLP, *The Impact of 4G Technology on Commercial Interactions, Economic Growth and U.S. Competitiveness* (Aug. 2011), at 7, accessed at <http://www.deloitte.com/us/impactof4g>.

that an increase of \$1.00 of investment in wireless broadband networks results in an increase of \$2.873 in final U.S. GDP. Moreover, a \$1 billion investment will yield 15,000 new jobs.⁴⁶ Adding \$1 billion per year of high-cost support investment into mobile broadband could yield 75,000 new jobs over a five-year period in rural and high-cost areas. Accordingly, it would seem to be counterproductive to cut investment in mobile broadband, potentially stunting the Nation's valuable economic growth.

As discussed below, the movement of universal service funding from implicit rates to an explicit funding mechanism has released enormous energy in the form of lower prices, higher volumes of service, and greater service offerings. That is, the price of a larger fund which is used to build modern infrastructure is offset by an extraordinary multiple of consumer benefit.

III. UNIVERSAL SERVICE REFORM.

In response to issues raised in the *Public Notice*, U.S. Cellular argues in the following sections that the Commission should establish separate funding mechanisms for wireline broadband and mobile wireless broadband networks, to ensure that both fixed and mobile networks are available in rural America. In setting budgets for the two separate funding mechanisms, the Commission should reject approaches advanced in the Wireline Industry Proposals and the State Member Plan that would dramatically underfund mobile broadband and would not be consistent with the Commission's core principle of competitive neutrality.

Instead, budgets for the two funding components should be set more evenly, in order to promote the development of new technologies across the board. If the Commission establishes separate wireline and mobile broadband funding mechanisms, the Commission also should provide that funding is fully portable among carriers within each funding mechanism.

⁴⁶ *Id.*

A forward-looking economic cost model adopted by the Commission for disbursing CAF support should be designed to capture the costs of deploying networks with sufficient capacity to meet projected consumer demand over a five-year period. U.S. Cellular also favors modifying the CostQuest Broadband Analysis Tool (“CQBAT”) to capture costs relating to both broadband and voice services, except that any such modification of CQBAT should be done in a manner that avoids the risk of prolonging the operation of outmoded circuit-switched networks.⁴⁷

The Commission should reject proposals that incumbent LECs should be given an ROFR option for the receipt of CAF support, since such an approach would be contrary to the Commission’s principle of competitive neutrality, it would be harmful to consumer welfare, and it would contradict the Commission’s objective to promote the efficient use of universal service funding.

U.S. Cellular supports the Commission’s use of interim milestones and benchmarks that are tailored to the number of carriers receiving support in a given service area, and the level of support provided to the carriers. With respect to carrier reporting requirements, U.S. Cellular urges the Commission to take account of the fact that, if it decides to fund a single carrier in a service area, with a ten-year franchise, then the Commission must bear the responsibility of establishing rigorous reporting requirements, as well as other regulations (along the lines of requirements contained in Section 251 of the Act), to ensure that the carrier’s dominance in the service area does not result in harms to consumer welfare.

These concerns for consumer welfare are also the basis for U.S. Cellular’s opposition to the use of a procurement model for use in disbursing funds to a single carrier in a service area.

⁴⁷ On August 6, 2011, U.S. Cellular submitted information on how a forward-looking cost model can be used to determine appropriate amounts of support in each geographic area. *See* U.S. Cellular August 6 Ex Parte (attaching U.S. Cellular USF Mobility Model Report (“Model Report”)), accessed at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021700907>.

Instead of attempting to forge explicit agreements with carriers receiving support, the Commission should simply affirm that carriers receiving universal service support for broadband deployment are subject to common carrier regulation under Title II of the Act.

In considering the role that states could play in advancing universal service, U.S. Cellular encourages the Commission to give priority to establishing uniform universal service rules and requirements that apply consistently throughout all the states.

The Commission should eliminate reliance on rate-of-return mechanisms for the disbursement of CAF funding. If the Commission instead decides to continue to use rate-of-return mechanisms in its reformed USF, then it should issue a further rulemaking notice to represcribe the current authorized rate of return, and should complete the proceeding before taking any final action to adopt new USF and ICC rules.

The Commission should be cautious in weighing proposals to eliminate CAF support in areas with unsubsidized competitors, since the purported benefits of such an action may prove to be illusory, and a better approach would be to focus on study area redefinition and disaggregation within study areas.

U.S. Cellular supports the establishment of a rate benchmark for residential voice services, which would be used to reduce a carrier's universal service support if its rates are below the benchmark, since this would prevent the over-subsidization of carriers with artificially low rates.

U.S. Cellular conceptually supports the transition period proposed in the ABC Plan, but opposes the proposal made in the Joint Letter to phase in funding for mobile broadband deployment to the extent necessary to ensure that CAF funding does not exceed defined budget levels. Moreover, if the Commission intends for support is to be phased down over a five-year period, then the phase down should provide for 100% of support in the first year, 80% in the second, and

so forth. If support is phased down by 20% in the first year, then the phase down is complete in four years, not five.

A. Separate Support for Mobile Broadband (Public Notice, Section I.A.).

U.S. Cellular has strongly advocated in favor of two funds, one for fixed broadband and one for mobile broadband.⁴⁸ Under the current system, one fund works because the Commission has declared that any company, using any technology that provides the nine supported services should be eligible to compete for support that goes with the customer.⁴⁹ Over the years, the value of mobility to the Nation's citizens has surpassed all expectations, as mobile applications and devices have become a critical component of the Nation's infrastructure.

In an all-IP broadband world, the services each provider delivers can be viewed as identical: data. Yet the utility of fixed and mobile delivery networks is far different. At least for the near future, fiber-based networks promise high capacity needed for fixed household or business locations, while mobile networks deliver the ability to access and manipulate broadband data over a wide area. Irrespective of whether mobile networks prove to be a complete substitute within a home or business for all data needs, each platform is distinct, both have value to the country, and funds must be devoted to ensuring that both are properly developed in rural and high-cost areas.

⁴⁸ See, e.g., U.S. Cellular Reply Comments, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337 (filed Aug. 11, 2010), at 30; U.S. Cellular Comments at 20.

⁴⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8858 (para. 145) (1997) (“*USF First Report and Order*”) (subsequent history omitted) (indicating that “any telecommunications carrier using any technology, including wireless technology, is eligible to receive universal service support if it meets the criteria under section 214(e)(1)”) (footnote omitted). Support today is portable among wireless carriers but the Commission decided to not make support fully portable. That is, support is not portable between fixed and mobile providers of voice service.

Solutions that meet the Commission's core principle that all support mechanisms must be competitively and technologically neutral are needed to ensure that the Commission's new funding mechanisms encourage entry by efficient providers and do not lock newcomers, who might have superior business plans or lower cost structures, out of the market. Accordingly, both the fixed broadband and mobile broadband funds must permit any carrier capable of meeting the prescribed service criteria to access support.

Section 254(b)(3) of the Act⁵⁰ requires the Commission to deliver to rural citizens access to advanced services that are reasonably comparable to those available in urban areas. It is therefore a critical component of fulfilling the Commission's statutory obligation to ensure that high-quality mobile services are available to rural citizens.

One fund, which provides support to only one carrier, cannot achieve this objective. As originally envisioned in the Broadband Plan and in subsequent proposals,⁵¹ one service provider would be selected in each funded area, which could leave rural America with a checkerboard of areas funded by fixed and wireless technologies that would be inefficient to deploy and deny rural consumers their statutory right to reasonably comparable services.

Having two funds dedicated to ensuring that critical fixed and mobile networks are available in rural areas also helps the Commission allocate funds as the telecommunications world continues to evolve. For example, ten years ago, getting basic mobile voice coverage to rural America was a worthy goal and simply defined. Today, while coverage remains an issue, the situation is more complex, as device makers have completely changed how we use mobile networks. In just a few years, textbooks could be obsolete in favor of tablets or other devices.

⁵⁰ 47 U.S.C. § 254(b)(3).

⁵¹ See *CAF NPRM*, 26 FCC Rcd at 4648-49 (paras. 281-283).

It is in the national interest for rural citizens to have robust mobile broadband networks that permit them to properly access new devices and applications. There are countless other mobile applications for business that will require mobile coverage, and mobile broadband, to deliver sufficient value to cause a company to move to a rural area. We cannot tap the Nation's full potential without critical mobile infrastructure and a separate fund dedicated to this goal is the best way to achieve it.

Evidence of how rapidly telecommunications and information services are evolving is all around us. Recently, the Commission's Technology Advisory Council ("TAC") showed that as of the end of 2009, 22.9% of adults have wireless service only, and nearly 30% of children have wireless service only.⁵² This is consistent with information from the CDC Wireless Substitution Report, which reports that, as of the end of 2010, 29.7% of homes were wireless-only and 15.7% received all or almost all calls on wireless phones despite having a landline device.⁵³ More than half (53.5%) of adults between the ages of 25 and 29 live in households with only wireless phones.⁵⁴ According to a Pew Research study released earlier this month, "[m]obile phones have become a near ubiquitous tool for information-seeking and communicating"⁵⁵ The Pew study found that 35% of Americans own a smartphone,⁵⁶ that 73% of Americans use their cell

⁵² See Exhibit 1.

⁵³ CDC Wireless Substitution Report at 1.

⁵⁴ *Id.* at 2.

⁵⁵ Aaron Smith, "Americans and Their Cell Phones," Pew Research Center (Aug. 15, 2011), at 2, accessed at <http://pewinternet.org/Reports/2011/Cell-Phones.aspx>.

⁵⁶ *Id.* at 3.

phones for text messaging,⁵⁷ and that 40% of cellphone owners have used their phones for assistance in emergency situations.⁵⁸

According to TAC, by 2018, **only 8%** of the U.S. population will be served by traditional Time Division Multiplex access lines at their residence.⁵⁹ This downward trend is also seen in industry reports, including a recent one by JSI Capital Advisors, reporting that fixed voice connections fell by 11.6% in 2010.⁶⁰

■ ***How Should the Commission Set the Relative Budgets of Two Separate Funding Components?***

To be clear at the outset, the Wireline Industry Proposals and the State Member Plan completely fail the congressional mission set forth in Section 254(b)(3) of the Act. The proposals would allocate between \$4.2 and \$4.5 billion in annual funding for price cap incumbent LECs and rate-of-return carriers, while proposing up to \$300 million (or up to \$500 million) in annual funding for mobile broadband.⁶¹ With mobile broadband technology ascendant, especially among low-income Americans,⁶² there is no economic rationale to implement proposals that lock in \$4.2-4.5 billion in support to wireline technology, to the near exclusion of mobile wireless technology.

⁵⁷ *Id.* at 5.

⁵⁸ *Id.* at 8.

⁵⁹ See Exhibit 2.

⁶⁰ See JSI Capital Advisors website at <http://www.jsicapitaladvisors.com/phone-numbers/2011/4/7/4q10-ilec-annual-connections-growth.html>.

⁶¹ See ABC Plan, Attach. 1, at 2, 8; Joint Letter at 2. The State Member Plan has proposed up to \$500 million in annual funding for mobile broadband. See State Member Plan at 68.

⁶² See CDC Wireless Substitution Report at 3 (noting that adults living in poverty (42.8%) and adults living near poverty (35.2%) were more likely than higher income adults (24.1%) to be living in households with only wireless telephones).

The U.S. Cellular USF Mobility Model Report, submitted to the Commission by U.S. Cellular earlier this month, illustrates the funding issues that would come into play if the Commission were to proceed with the budget approaches suggested in the Wireline Industry Proposals and the State Member Plan. The Model Report presents preliminary results of the costs associated with U.S. Cellular’s deployment of a ubiquitous 4G wireless networks in four of the sixteen states in which U.S. Cellular currently receives high-cost support.⁶³ The results are summarized as follows:

STATE	FUNDED SUBSCRIBERS	ANNUAL MODELED FUNDING
Maine	79,902	\$ 14,400,000
Nebraska	177,127	45,700,000
West Virginia	96,709	13,200,000
Wisconsin	305,854	48,800,000
TOTAL	659,592	\$ 122,100,000

Although these modeling results do not reflect “an attempt at creating an actual final cost for building and operating a 4G wireless network” in the states involved,⁶⁴ they do provide a context and perspective from which it may reasonably be concluded that proposals to limit funding for mobile broadband deployment to annual levels of up to \$300 million (or up to \$500 million) are not realistic in light of the funding levels necessary to accomplish ubiquitous mobile broadband deployment in rural areas. On the other hand, the Model Report shows that there would be considerable “bang for the buck” from extending CAF support for mobile broadband deployment, in terms of consumers that would have access to mobile broadband services. Not only would similar results for wireline deployment be unlikely under the Wireline Industry Pro-

⁶³ See U.S. Cellular August 6 Ex Parte, Enclosure (“U.S. Cellular USF Mobility Model Report, August 5, 2011”), at 20-28, accessed at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021700907>.

⁶⁴ *Id.* at 20.

posals and the State Member Plan, but, as the ABC Plan concedes, its members are likely to exercise proposed ROFR options in 82% of their rural coverage areas,⁶⁵ catastrophically locking out access to high-quality mobile broadband service for the vast majority of rural Americans indefinitely.

For a decade, wireline access lines have been in decline, while support to wireline technology has remained constant, or has risen.⁶⁶ The gap between what consumers are using and what support mechanisms are funding is rapidly increasing. In response, the Wireline Industry Proposals would lock those funds in for ten more years, precisely at the time when the demand for mobile wireless services is soaring, and when mobile wireless networks in rural areas still require substantial construction and improvement to provide high quality services throughout the areas where rural people live, work, and travel.

The budgets for the fixed broadband and mobile broadband funds should be set more *evenly*, to encourage the development of new technologies across the board. Equitably, the wireless industry contributes over 40% of the total \$4.5 billion high-cost fund, and the Wireline Industry Proposals would return only \$300 million, or 6.75% of the total fund.⁶⁷ The State Member Plan would return only \$500 million, or 11.1%.⁶⁸ There is no economic or public policy rationale for apportioning such a low percentage of the fund to mobile wireless technology. None.

U.S. Cellular understands that there is a policy rationale for not shocking wireline carriers or consumers, but concerns about Rural Utilities Service (“RUS”) debt, and about the survival of rural carriers into perpetuity, are hardly insurmountable obstacles. Like commercial loans, RUS

⁶⁵ ABC Plan, Attach. 1, at 6, n.7.

⁶⁶ See Exhibit 3.

⁶⁷ See Joint Letter at 2.

loans have a finite life span and they are paid down over time. Appropriate transition mechanisms that allow carriers time to prepare for changes, should mitigate completely credit concerns of wireline carriers. To be fair, wireless carriers have commercial loans and share similar concerns about regulatory flash cuts that cripple build plans and threaten loan covenants. But that is no reason to argue for an indefinite *status quo* that turns the program from one that serves consumers to one that subsidizes loan portfolios and secures profits.

As drafted, the ABC Plan would provide approximately \$42 billion in support over a ten-year period⁶⁹ with the promise of providing 4 Mb/768k service to 4 million homes and businesses in rural areas.⁷⁰ Under this approach, in 2022, the upload speed in many or most rural areas will not have reached 1 Mb because of technology constraints, cost, and no governmental push, while mobile technologies such as LTE will likely be unable to finance a comprehensive build-out of a service offering because incumbents have an insuperable marketplace advantage and control all the support. Yet, by 2022, LTE and future technologies can reasonably be expected to deliver service speeds many times greater than 4 Mb/768k service.⁷¹

⁶⁸ See State Member Plan at 68.

⁶⁹ See ABC Plan, Attach 1 at 2 (stating that “[b]roadband providers that elect to receive support from the CAF will receive a fixed level of support for a term of ten years from the date on which support is awarded”).

⁷⁰ *Id.* at 4.

⁷¹ For example, a recent paper describes the possibility of creating a “cloud wireless system” utilizing Distributed Input Distributed Output (“DIDO”) wireless technology that would greatly increase wireless data rates. The technology:

is a breakthrough approach that allows each wireless user to use the full data rate of shared spectrum simultaneously with all other users, by eliminating interference between users sharing the same spectrum. With conventional wireless technologies the data rate available per user drops as more users share the same spectrum to avoid interference, but with DIDO, the data rate per user remains steady at the full data rate of the spectrum as more users are added.

Permitting incumbents to lock out superior and more efficient competitors by exclusively controlling support is precisely the problem the Commission identified when it began implementing the 1996 Act, and it is why the Commission adopted competitive neutrality as a core principle. And to top it off, after being given an exclusive franchise, the price cap wireline carriers now ask the Commission to *deregulate* their offerings, including COLR obligations.⁷² This is in stark contrast to their past advocacy, and that of the rural LECs, who for years have claimed some special, yet undefined, protected status as COLRs.⁷³

The ABC Plan would relegate funding for satellite technology to the \$300 million mobility fund, essentially renaming it a mobility/satellite pool,⁷⁴ rather than placing satellite technology squarely where it belongs—in the fixed broadband fund. The Nation’s satellite broadband pro-

Steve Perlman & Antonio Forenza, “Distributed-Input-Distributed-Output (DIDO) Wireless Technology, A New Approach to Multiuser Wireless,” (undated) (footnote omitted), accessed at <http://venturebeat.com/2011/07/28/steve-perlman-unveils-dido-white-paper-explaining-impossible-wireless-data-rates/>.

⁷² AT&T, for example, has proposed that the Commission should require states—as a condition of CAF funding—to eliminate COLR obligations that effectively require carriers to provide telephone service and long distance service. AT&T Comments, WC Docket No. 10-90 *et al.* (filed Apr. 18, 2011) (“AT&T Comments”) at 61. U.S. Cellular agrees with the National Association of State Utility Consumer Advocates’ (“NASUCA”) criticism that “AT&T’s approach would completely undermine the fundamental goals of federal law and the CAF, which are to bring ubiquitous voice and broadband services to rural areas at rates that are reasonably comparable to those in urban areas.” NASUCA Reply Comments at 19 (footnote omitted).

⁷³ This advocacy by price cap carriers and rural LECs has frequently been criticized. For example, the Rural Cellular Association (“RCA”) has indicated that:

[I]n the entire universal service debate, perhaps no other argument has been so shamelessly used and abused as the COLR obligation. Every new wireless entrant that seeks ETC status statutorily accepts that it might be asked to serve all customers within its service territory at some future date. Therefore, because wireless ETCs face effectively the same service obligations as incumbent LECs, there is absolutely no reason to provide incumbent LECs with a preferential level of high cost support. Any USF reform measures should reflect this reality, particularly if the Commission wants to uphold its guiding policymaking principle of competitive neutrality.

RCA Comments, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, NBP Notice # 19, filed Dec. 7, 2009, at 27. *See* U.S. Cellular Reply Comments, WC Docket No. 10-90 *et al.* (filed Aug. 11, 2010), at 22-23.

viders provide consumers with a dish, bolted to a structure.⁷⁵ That is a fixed service, and funding for such a service belongs within the fixed broadband fund.

U.S. Cellular urges the Commission to anticipate what the world is likely to look like in just five years, a world where urbanites have access to a wide variety of mobile broadband devices and applications that drive economic development, while vastly improving the quality of life. As Chairman Genachowski said recently in Indiana:

The smartphone market has taken off in the last two years, with the devices and networks getting smarter and faster every day, and with sales up 45% just in the last year. Tablets—an amazing game-changer—didn’t exist two years ago. In 2011, Americans will buy 26 million of these mobile marvels, and 83% of Fortune 500 companies are already testing or deploying iPads. The apps economy on smartphones and tablets continues to grow, with more than 80,000 developers creating 500,000 unique apps—providing benefits to consumers, and creating jobs.⁷⁶

The big question is whether these words, which hold so much promise for the Nation, will be backed by a meaningful commitment from the Commission to see that rural citizens have access to high-quality mobile wireless services that enable the Chairman’s promising vision to be realized beyond the Nation’s core urban areas.

■ ***How Should the Budgets Be Revised Over Time?***

Portability, the ability to have funds flow with consumer needs and preferences, is a key to implementing universal service funding in a competitively neutral way.⁷⁷ If two funds are adopted, funding can move within each program to the carrier that best serves consumers without

⁷⁴ See ABC Plan, Attach. 1, at 8.

⁷⁵ For example, as U.S. Cellular understands it, WildBlue, one of the most popular satellite-based broadband service providers offers service exclusively via a fixed terminal. See http://www.wildblue.com/aboutWildblue/how_it_works_demo.jsp.

⁷⁶ Genachowski Speech at 3.

⁷⁷ See *USF First Report and Order*, 12 FCC Rcd at 8786 (para. 15).

concern about supporting one technology based on the cost of building a different technology. The Commission can look at deployment data and market share statistics to determine the best use of support funds. If throughput speeds in rural areas lag behind speeds available in urban areas, then more funding can be made available to close the comparability gap, as required by Section 254(b)(3) of the Act.

It is not necessary for the Commission to install a formula for allocating funds in the future, but it is necessary to declare that the Commission will revisit the state of affairs periodically using its competition reports,⁷⁸ its reports pursuant to Section 706 of the 1996 Act, and other data collections that are available to the Commission. That data, combined with reporting on broadband deployment made by ETCs participating in the universal service program, should inform the Commission as to what adjustments need to be made.

The Commission should not be in a position where, for example, (1) 75% of the marketplace for broadband services in urban areas is mobile, (2) new mobile applications and platforms are driving economic opportunities in urban areas, (3) high-cost areas lack sufficient service quantity and quality to enable our citizens to take full advantage of them, and (4) the ABC Plan has locked the Commission into \$42 billion in support payments to the wrong technology. Any result that looks even remotely like this will broaden the economic development gap between urban and rural areas, leaving rural areas without an essential infrastructure component needed to compete. To avoid this result, the Commission must develop rules that provide the agency with sufficient flexibility to direct support to areas that need help and to services that rural consumers demand and need.

⁷⁸ Congress requires the Commission to produce an annual report on the state of competition in the mobile services marketplace pursuant to Section 332(c)(1)(C) of the Act.

B. CAF Support for Price Cap Areas (Public Notice, Section I.C.1.).

■ ***Is Ten Years an Appropriate Time Frame for Determining Support Levels, Given Statutory Requirements for an Evolving Definition of Universal Service?***

As stated above, the Commission needs to be able to shift support toward technologies that citizens need and to areas where investment is needed. We as a Nation cannot lock in a commitment of \$42 billion through 2022 to fixed services, while demand for mobile services in rural areas explodes. It is time for the Commission to end the entitlement mentality for all program participants. It is not enough to say that a carrier relies on support to stay viable, or that RUS loans are threatened. Whatever the Commission does, it should not lock any carrier into guaranteed funding over a ten-year period. Funding must flow more directly to the services that consumers are using, not propping up networks they are abandoning.

■ ***Should a Forward-Looking Cost Model Reflect the Costs of Building a Network Capable of Meeting Future Consumer Demand for Higher Bandwidth That Reasonably Can Be Anticipated Five Years from Now?***

A model requires periodic care and feeding. There is a tradeoff between requiring more investment now, without higher speed requirements immediately, and potentially inefficient investments now that have to be changed out when standards change.

In U.S. Cellular's view, it would make sense to design a forward-looking cost model that captures costs incurred in designing and operating broadband networks that are able to accommodate demand for higher bandwidth over a five-year period. This would avoid the "built-in obsolescence" of funded broadband networks, which, in turn, would reduce the risk that greater levels of support would be needed in the future in order to meet capacity demand that could have been anticipated.

C. Right of First Refusal (Public Notice, Section I.C.2.).

Setting aside funding for a particular class of carrier would be inimical to competitive neutrality, efficiency, and ultimately consumer welfare. As the ABC Plan makes clear, it is likely that the proposed ROFR will be exercised in more 80% of census blocks served by price cap carriers, catastrophically stunting entry by competitive wireless carriers for at least ten years.⁷⁹ U.S. Cellular cannot think of a single public policy reason justifying a virtual set-aside, for the least efficient providers of services.

To put into perspective what a more than \$20 billion dollar commitment to the ABC Plan means,⁸⁰ recall that in 2008, CostQuest Associates, Inc. (“CostQuest”), “estimate[d] that it will require roughly \$22 billion of upfront capital to deploy *ubiquitous wireless broadband coverage, via 3G technologies*, in the U.S.”⁸¹ That is virtually the entirety of rural, high-cost America, some 12 million people.⁸² The ABC Plan promises 4 Mb/768k service to just 4 million additional households and businesses for roughly the same price.⁸³

Accordingly, it is reasonable to conclude that a \$2 billion annual commitment to LTE would, over ten years, yield far more service than would be produced by the ABC Plan, to far

⁷⁹ ABC Plan, Attach. 1, at 6, n.7 (noting that the price cap companies “estimate that incumbent LECs would have the opportunity to accept or decline CAF support in 82.0 percent of the census blocks that are eligible for CAF support, representing 82.2 percent of the \$2.2 billion in support targeted to areas served by price cap LECs”).

⁸⁰ The ABC Plan targets \$2.2 billion in funding per year, with broadband providers electing to receive support for a term of ten years. ABC Plan, Attach. 1, at 2.

⁸¹ CostQuest Associates, “U.S. Ubiquitous Mobility Study,” (filed Apr. 17, 2008) at 20 (emphasis added). The study was submitted to CTIA—The Wireless Association® (“CTIA”).

⁸² The Broadband Plan points out that “6 million housing units with 12 million people do not have access to any always-on service with actual download speeds of 768 Kbps or higher” NBP at 24, n.33.

⁸³ ABC Plan, Attach. 1, at 4.

more households, to far more geographic areas, at significantly higher speeds than the 4 Mb/768k service speeds that the ABC Plan has suggested is possible for wireline technology.

If these networks were being constructed today, or if a decision had to be made *solely* for the benefit of our rural citizens, is there any doubt but that the allocation of funds in the CAF would favor a rapid mobile wireless LTE deployment? In ten years, a ubiquitous LTE deployment would generate far more economic benefit to our country than the extension of last-mile DSL-speed services that are useful only at the home or business site.

The very idea that an ROFR option should be used to distribute almost all of the available support over the next ten years to fixed wireline incumbents should be an obvious non-starter for policymakers. The ABC Plan is an industry proposal, tailored for industry, not for rural citizens.

D. Public Interest Obligations (Public Notice, Section I.C.3.).

■ ***How Could a Forward-Looking Cost Model Be Improved To Account for the Costs of Providing Both Broadband and Voice Service?***

The Federal-State Joint Board on Universal Service (“Joint Board”), in a Recommended Decision adopted in 2010, expressed its belief that “it is appropriate for the Universal Service Fund to support networks that provide broadband services, in addition to voice service”⁸⁴ The Joint Board therefore recommended that the Commission exercise its authority pursuant to Section 254(b)(7) of the Act⁸⁵ to establish a new principle of universal service, namely, that “that universal service support should be directed where possible to networks that provide advanced services, as well as voice services.”⁸⁶

⁸⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 25 FCC Rcd 15598, 15625 (para. 75) (2010) (“*Recommended Decision*”).

⁸⁵ 47 U.S.C. § 254(b)(7).

⁸⁶ *Recommended Decision*, 25 FCC Rcd at 15625 (para. 75).

The *Public Notice* points to this Joint Board recommendation and asks how the CQBAT model could “be improved to account for the costs of providing both broadband and voice service” if the Commission were to adopt the recommendation.⁸⁷

The issue raised by the *Public Notice* seems to focus on the steps that would be necessary to retool the CQBAT cost model so that it would include cost projections for the ongoing operation of wireline networks that are used to provide “plain old telephone service” (“POTS”) but that are also capable of providing broadband access at speeds that would qualify for CAF support. The CQBAT model, as presently formulated, estimates costs for the latter services, but not for the former services.

As a general matter, U.S. Cellular supports the use of cost modeling as a basis of determining the level of universal service support to be made available for voice-only wireline networks or wireline networks capable of providing advanced services as well as voice services.⁸⁸ The Commission determined 14 years ago “that universal service support should be based on the forward-looking economic cost of constructing and operating the network facilities and functions used to provide . . . supported services”⁸⁹

⁸⁷ *Notice* at 4. The CQBAT model was developed by CostQuest, Inc. (“CostQuest”) at the request of the Price Cap Carriers. “CQBAT allows the calculation of the forward-looking cost of providing broadband, and the calculation of estimated support levels, on a census block basis.” ABC Plan, Attach. 1, at 4. “All model scenarios assessed the costs for telecommunications companies to deploy wireline broadband service that is capable of delivering actual speeds of 4 Mbps download and 768 Kbps upload. . . . Cost estimates presume that supported networks would need to offer capacity sufficient to enable broadband service to all service locations in areas qualifying for CAF support, while it was assumed that 90 percent would be active customers.” ABC Plan, Attach. 2, at 1.

⁸⁸ Recently, U.S. Cellular submitted forward-looking cost-model data demonstrating that a model can be implemented within the current budget for competitive ETC support. See U.S. Cellular August 6 Ex Parte.

⁸⁹ *USF Fourteenth Report and Order*, 16 FCC Rcd at 11247 (para. 4) (citing *USF First Report and Order*).

U.S. Cellular consequently would not oppose adapting the CQBAT model so that it is capable of projecting those network costs that are unique to the provision of POTS service.⁹⁰ On the other hand, however, the Commission should keep in mind the fact that any expansion of the CQBAT model, so that it is capable of projecting costs related to the operations of networks providing POTS services, should be specifically intended and designed only for interim, transitional purposes. The Broadband Plan points out that:

USF . . . regulations were designed for a telecommunications industry that provided voice service over circuit-switched networks. . . . Unfortunately, the current regulatory framework will not close the broadband availability gap. A comprehensive reform program is required to shift from primarily supporting voice communications to *supporting a broadband platform that enables many applications, including voice.*⁹¹

Adapting the CQBAT model to accommodate funding the continued operation of circuit-switched networks should not inadvertently turn into a means of perpetuating the availability of ongoing universal service support for networks that must be transitioned out of existence.

■ ***What Specific Interim Milestones Would Be Effective in Ensuring That Carriers Receiving CAF Support Are Building Out Broadband at a Reasonable Rate During the Specified Build-Out Period?***

If support is provided to a single carrier in a defined area, as an exclusive franchise, then benchmarks must be set based on the amount of support a model provides. That is, if a model provides sufficient support to build out an area within five years, then interim benchmarks flow from that level of support. If less support is provided, stretching out the time it takes to build out, then longer benchmarks would be used.

⁹⁰ U.S. Cellular recognizes that, in some cases, developing such modeling components would be a complex undertaking. “Because rural carriers generally have higher operating and equipment costs, which are attributable to lower subscriber density, small exchanges, and a lack of economies of scale, the Commission [has] recognized that additional effort would be needed to develop a forward-looking mechanism appropriate for rural carriers.” *Id.* at 11247 (para. 5).

If support is provided to an area, and more than one carrier can access support, then a similar analysis is used, but each carrier must demonstrate how it is offering service throughout the eligible area using its facilities, or a combination of facilities and resale, as required by Section 214(e) of the Act.⁹² Today there are a number of states, including, for example, Oregon, Maine, and West Virginia, that are effectively monitoring competitive carrier investments in rural areas. A similar accountability mechanism is needed for wireline carriers deploying fiber and DSL technologies.

- ***Should the Commission Adopt Reporting Requirements for Supported Providers Regarding Pricing and Usage Allowances To Facilitate the Ability To Ensure That Consumers in Rural Areas Are Receiving Reasonably Comparable Services at Reasonably Comparable Prices?***

The amount of regulation required correlates directly with the number of carriers serving a particular area. If the Commission proposes to fund a single carrier, with a ten-year franchise, to the exclusion of all others, it is going to create a dominant carrier within the marketplace that will require substantially more regulation than do carriers in competitive markets.⁹³ Without price regulation and robust market-opening requirements similar to those established in Section 251 of the Act,⁹⁴ consumers would soon be subject to abusive practices employed by carriers with market power.

This is why the ABC Plan's proposal that a single carrier should be deregulated is absurd on its face. There is no evidence that the competitive ETC program has resulted in wireless carriers being able to raise prices or engage in unreasonable business practices in rural areas as a re-

⁹¹ NBP at 140-41 (emphasis added).

⁹² 47 U.S.C. § 214(e).

⁹³ See U.S. Cellular Comments at 30-31 (explaining that adverse effects would result from the Commission's installing reverse auction winners as the sole funding recipients in their service areas).

sult of market power.⁹⁵ Competition has prevented wireless carriers from increasing prices in high-cost areas. Portability has empowered consumers to change carriers when service quality is poor or prices are too high, minimizing the amount of regulation needed to discipline market participants. If the Commission is intent on creating a dominant carrier, then it must also bear the cost and responsibility of protecting consumers from marketplace abuses.

E. Eligible Telecommunications Carrier Requirements (Public Notice, Section I.C.4.).

■ *What Specific Changes to the Commission’s Rules, Including Part 54, Subpart C of the Commission’s Rules, Would Be Necessary To Implement the ABC Plan’s Proposed Procurement Model?*

The ABC Plan proposes a procurement model, in which recipients of CAF support incur service obligations only to the extent they agree to perform them in explicit agreements with the Commission, and CAF recipients are free to use any technology, wireline or wireless, that meets specified bandwidth and service requirements.⁹⁶

The idea that the Commission would set up a dominant carrier and then impose service obligations “only to the extent that carriers agree to perform them in explicit agreements with the Commission”⁹⁷ threatens consumer welfare in a way never before seen.

The Commission need not reach the task of rewriting Part 54 of its rules to regulate information service providers who receive support. The statute makes clear that support is only

⁹⁴ 47 U.S.C. § 251.

⁹⁵ One example of the positive effects of wireless competition is the fact that “wireless carrier-related complaints [filed with the Commission] fell 4% from 2008 to 2009, even though overall wireless subscribership grew almost 6%.” Christopher Guttman-McCabe, “More Good News for Wireless Consumers,” CTIA–The Wireless Association® Blog, Aug. 31, 2010, accessed at <http://blog.ctia.org/2010/08/31/more-good-news-for-wireless-consumers/>.

⁹⁶ See Notice at 5; ABC Plan, Attach. 1, at 2, 7.

⁹⁷ ABC Plan, Attach. 1, at 2.

available to telecommunications carriers. The Commission need only adopt a rule affirming that carriers seeking to access universal service support shall be subject to Title II regulation as common carriers for the subsidized services they provide. The idea that support will flow to unregulated Title I carriers is four square at odds with the statute Congress wrote. Only Congress can change that.

F. State Role in Monitoring and Oversight of Funding Recipients (Public Notice, Section I.C.5.).

The *Public Notice* indicates that the State Members of the Federal-State Joint Board on Universal Service, as well as other commenters, have proposed an ongoing role for states in monitoring and oversight with respect to universal service funding recipients.⁹⁸

■ ***Are There Any Specific Illustrative Areas Where the States Could Work in Partnership with the Commission in Advancing Universal Service, Subject to a Uniform National Framework?***

Without question, one of the most important things the Commission can do is establish uniform universal service rules and requirements that apply consistently throughout the country. It is extraordinarily expensive and complex to ask funding recipients' customer care personnel, engineers, executives, managers, and sales associates to learn and comply with more than one set of regulatory requirements. Failures to comply with regulatory requirements are often traced directly to the complexities involved in training and monitoring employees who are asked to comply with different standards in different jurisdictions. Higher regulatory costs incurred by rate-of-return carriers are passed on to the carriers' rate bases, and eventually the high-cost program.

Accordingly, if the Commission intends to set forth rules concerning, for example, service quality, then it should do so clearly and make such rules applicable throughout the states for

⁹⁸ *Notice* at 5.

carriers participating in the federal fund. States may have different regulations only to the extent that they have a state high-cost mechanism that a carrier participates in. Once consistent regulations are in place, it will be more efficient for states to enforce them.

G. Reforms for Rate-of-Return Carriers (Public Notice, Section I.D.).

■ ***Should the Commission Act To Eliminate Reliance on Rate-of-Return Mechanisms?***

The Commission should take action promptly to eliminate reliance on rate-of-return mechanisms for the disbursement of universal service support,⁹⁹ or, at a minimum, to reduce the current authorized rate of return,¹⁰⁰ because any continuing reliance on the current rate of return as a component in calculating USF support is inherently problematic.

Thirteen years ago, the Commission convened its “Rural Task Force” to come up with a means to move rural telephone companies to a system based on forward-looking costs. That effort culminated in the *RTF Order*. There, the Commission concluded that rural LECs should remain on a “modified embedded cost” methodology for five years, until 2006.¹⁰¹ If the RLEC Plan is adopted, it would extend rate of return another ten years, out to 2022, keeping in place an inefficient subsidy mechanism that benefits carriers and not consumers, over a quarter of a century after the 1996 Act.

⁹⁹ The Commission has noted that “if support is based on cost, it should be based on forward-looking economic cost, not embedded costs, and that there may be significant problems inherent in indefinitely maintaining separate mechanisms based on different economic principles.” *CAF NPRM*, 26 FCC Rcd at 4690 (para. 448) (footnotes and internal quotation marks omitted).

¹⁰⁰ The Commission has sought comment on whether it should explore represeting the rate of return. *Id.* at 4692 (para. 456).

¹⁰¹ *RTF Order*, 16 FCC Rcd at 11256 (para. 25).

In examining the relationship between the existing high-cost USF disbursement mechanism and reliance on rate-of-return mechanisms, a study conducted seven years ago concluded that:

It is generally accepted by economists and regulators that a firm regulated under an ROR framework faces incentives to increase and/or overstate its costs, and is discouraged from operating efficiently. Because the high-cost USF system is also based on these regulatory accounts, to the extent that the Rural ILECs are operating inefficiently and/or inflating their costs, the high-cost payments will be unnecessarily high.¹⁰²

The Office of Management and Budget has taken a similar view, finding that “[t]he High Cost program subsidies generally make rural incumbent carriers whole, regardless of their investment decisions, business model, or the presence of competition in the market by guaranteeing ‘reasonable’ rates of return”¹⁰³

AT&T also has noted a further way in which rate-of-return regulation has distorted high-cost support disbursements in the current USF system, explaining that rural carriers typically “are subject to rate-of-return regulation in the interstate jurisdiction, and thus continue receiving federal universal service support for their interstate cost recovery irrespective of whether they lose a line (in that event, their per-line support goes up to ensure that they continue to earn their specified rate of return).”¹⁰⁴ Moreover, Ad Hoc indicates that state-level deregulatory undertakings, which have eliminated regulation of many local exchange services and rates, “were premised upon the theory that the local service market had become sufficiently competitive for the

¹⁰² Susan M. Gately & Scott C. Lundquist, Economics and Technology, Inc., *Lost in Translation: How Rate of Return Regulation Transformed the Universal Service Fund for Consumers into Corporate Welfare for the RLECs* (Feb. 2004) at i, *cited in* Ad Hoc Telecommunications Users Committee (“Ad Hoc”) Comments, WC Docket No. 10-90 *et al.* (filed Apr. 18, 2011) (“Ad Hoc Comments”) at 12, n.28.

¹⁰³ Office of Management and Budget, *Expect More, Detailed Information on the Universal Service High Cost Assessment*, § 1.4 (2008), accessed at <http://www.whitehouse.gov/omb/expectmore/detail/10004451.2005.html>.

market, rather than any form of rate regulation, to constrain rates at competitive market levels.”¹⁰⁵

In light of the drawbacks involved in continuing to include rate-of-return regulation as a component of determining support disbursements under the Commission’s transformed CAF system, the Commission should consider freeing its USF regime from any reliance upon rate-of-return regulation as a determinant for, or calculation component of, CAF support disbursements. In fact, the Broadband Plan recommended that the Commission should require rate-of-return carriers to move to incentive regulation.¹⁰⁶ U.S. Cellular agrees with CTIA that “[o]ne of the central failings of the current high-cost support system is that much of it is tied inextricably to rate-of-return regulations that deter innovation, cast a blind eye toward inefficiency, and do not reflect the level of retail competition that has developed across the U.S.”¹⁰⁷

■ ***What Data Would the Commission Need To Waive Part 65 and Act Quickly To Adopt a New Rate of Return?***

The Commission “seek[s] comment on what data the Commission would need to have in the record to enable it to waive the requirements in Part 65 of the Commission’s rules for a rate

¹⁰⁴ AT&T Comments at 14, n.20.

¹⁰⁵ Ad Hoc Comments at 59.

¹⁰⁶ NBP at 147. The Broadband Plan explained that:

Rate-of-return regulation was implemented in the 1960s, when there was a single provider of voice services in a given geographic area that had a legal obligation to serve all customers in the area and when the network only provided voice service. Rate-of-return regulation was not designed to promote efficiency or innovation; indeed, when the FCC adopted price-cap regulation in 1990, it recognized that rate of return does not provide sufficient incentives for broad innovations in the way firms do business.

Id. (footnote and internal quotation marks omitted).

¹⁰⁷ CTIA Comments, WC Docket No. 10-90 *et al.* (filed Apr. 18, 2011) at 27.

of return prescription proceeding, so that the Commission could quickly adopt a particular rate of return.”¹⁰⁸

The Commission’s apparent interest in acting quickly to represcribe its authorized rate of return¹⁰⁹ is encouraging because proceeding with the USF transformation while leaving an 11.25% rate of return in place would undermine the Commission’s efforts to ensure the efficient and equitable distribution of CAF support.

Ideally, the Commission should fix the rate-of-return problem, utilizing the procedures and methodologies prescribed in Part 65 of its rules, *before* taking any final action to transform its USF and ICC rules. Doing so, of course would preempt the risk that the current 11.25% rate of return would distort and undermine the efficient and fair application of the Commission’s new CAF regime. In addition, utilizing existing Part 65 procedures and requirements would guard against any legal challenge to the resulting new authorized rate of return. Waiving Part 65, in order to quickly adopt a new rate of return in this proceeding, could be more susceptible to legal challenge.

If, however, the Commission chooses not to initiate and complete a Part 65 proceeding before taking final action in the pending proceeding, then it should, at a minimum, issue a further rulemaking notice in the pending proceeding, to seek targeted data for use in prescribing a revised rate of return. This approach would be consistent with Part 65 procedural requirements, which state that “[a]ll interstate exchange access carriers, their customers, and any member of the public may participate in rate-of-return proceedings to determine the authorized unitary interstate

¹⁰⁸ Notice at 6.

¹⁰⁹ See *CAF NPRM*, 26 FCC Rcd at 4692 (para. 456).

exchange access . . . rate[] of return”¹¹⁰ The Commission could formulate specific data requests in the further rulemaking notice, as a means of ensuring sufficient input for its prescription of a revised rate of return and for building a case to justify interim action and waiver of the Part 65 requirements.

Issuing a further rulemaking notice would serve more effectively than the *Public Notice* as a means of ensuring a solid basis for an interim represcription, since the further rulemaking notice would provide the Commission with an opportunity to formulate specific tentative criteria, data components, and methodologies for use in making the represcription, give interested parties an opportunity to comment on the Commission’s tentative approach, and provide these parties with a structured means of furnishing data pertinent to the Commission’s undertaking. Such an approach would be preferable to the process launched in the *Public Notice*, and also would be consistent with the Commission’s approach in the *CAF NPRM*, in which it sought “comment on whether the Commission should initiate a proceeding to represcribe the authorized rate of return for rate-of-return carriers if it determines that such carriers should continue to receive high-cost support under a modified rate-of-return system.”¹¹¹

There is precedent for the procedural approach suggested here. In 1989 the Commission prescribed an interim rate of return.¹¹² The Commission’s action, which continued in place the existing 12% rate of return and also set a pleading cycle for a represcription proceeding, relied

¹¹⁰ 47 C.F.R. § 65.100(a).

¹¹¹ *CAF NPRM*, 26 FCC Rcd at 4692 (para. 456).

¹¹² *Refinement of Procedures and Methodologies of Represcribing Interstate Rates of Return for AT&T Communications and Local Exchange Carriers; Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket Nos. 87-463, 89-624, Order, 5 FCC Rcd 197 (1989).

upon updated financial and economic data submitted by interested parties in response to a Public Notice issued by the Common Carrier Bureau.¹¹³

The *CCB Public Notice* provides a pertinent guide regarding what data the Commission would need in order to “quickly adopt” a new rate of return in the pending proceeding. The *CCB Public Notice* sought “financial data and other comments addressed to the question whether the conditions which supported the [then current] prescription have changed so substantially as to require revision of that prescription.”¹¹⁴ The *CCB Public Notice* also noted that parties required to file initial rate-of-return submissions should provide “current embedded cost of debt, with a complete explanation of the manner in which it was computed[,]”¹¹⁵ current debt-equity ratio data, and information regarding cost of capital, including cost of preferred stock and cost of equity.¹¹⁶ U.S. Cellular is constrained to note here that this kind of prescriptive and detailed oversight is required in a rate-of-return world, and the Commission should expect proponents of a rate-of-return regime to embrace it as the price for retaining such a regime. This approach does not advance the 1996 Act’s intent to advance competition in all markets throughout the Nation.

■ ***Should the Commission Eliminate CAF Support in Areas with an Unsubsidized Competitor?***

The *Public Notice* seeks comment on a suggestion in the RLEC Plan “that the Commission could establish a process to reduce an incumbent’s support if another facilities-based pro-

¹¹³ *Comment Sought on Extension or Revision of the Current Rate of Return Prescription for Interstate Services of Local Exchange Carriers*, CC Docket No. 87-463, Public Notice, 4 FCC Rcd 7051 (Com. Car. Bur. 1989) (“*CCB Public Notice*”).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Cf. id.*; see 47 C.F.R. § 65.305.

vider proves that it provides sufficient broadband and voice service to at least 95% of the households in the incumbent's study area without any support or cross-subsidy.”¹¹⁷

The problem with the process referenced in the *Public Notice* is that it promises benefits that are in fact illusory. As U.S. Cellular has previously explained in this proceeding:

[P]ortions of an incumbent's service area in which an unsubsidized competitor is operating are not severable, in any practical sense, from remaining portions of the service area, and attempting to eliminate support received by the incumbent that is associated with the “competitive” portion of its service area is likely to have adverse consequences for consumers in the remaining portions of the service area.¹¹⁸

U.S. Cellular has explained that, to avoid these problems, which could be generated inadvertently by any attempt to withhold or continue support to incumbent carriers based on determinations of whether unsubsidized competitors are offering service in some subset of the incumbent's service area, it would be more prudent and effective for the Commission “to focus on disaggregation within study areas, and the [redefinition] of study areas, as a means of targeting support to areas with the highest costs.”¹¹⁹

H. Ensuring Consumer Equity (Public Notice, Section I.E.).

- ***Should the Commission Establish a Rate Benchmark for Residential Voice Service During the Transition and Reduce Support to a Carrier to the Extent Its Local Rates Are Below the Benchmark?***

¹¹⁷ *Notice* at 6-7 (citing RLEC Plan at 51-56). The RLEC Plan identifies numerous “substantial issues and concerns” associated with proposals to reduce or eliminate USF support in so-called “competitive” areas, and urges the Commission to proceed with “great caution” in considering such proposals. RLEC Plan at 50-52. The RLEC Plan also observes that:

[G]iven the substantial likelihood that the competitor will operate in the most densely populated (*i.e.*, lowest-cost) portion of any given study area, any disaggregation and reallocation of costs will almost certainly result in an *increase* in support for the ILEC, as the benefits of averaging associated with the lower-cost “hole” are eliminated and the higher costs of serving the “donut” must be taken fully into account on a stand-alone basis.

Id. at 51 (emphasis in original) (footnote omitted).

¹¹⁸ U.S. Cellular Reply Comments at 91.

¹¹⁹ *Id.* at 92.

The *Public Notice* seeks comment on a proposal that the Commission should “develop a benchmark for voice service and reduce a carrier’s high-cost support by the amount that its rate falls below the benchmark.”¹²⁰ The *Notice* cites a proposal made by Ad Hoc that “[t]he Commission should select a rate benchmark and impute local revenues consistent with the benchmark to carriers seeking additional recovery revenues, whether or not the carrier or state regulatory authorities have established end user charges consistent with the benchmark.”¹²¹ In other words, if a carrier’s rates are below the benchmark, then the level of universal service support disbursed to the carrier will be reduced by an amount equal to the difference between the revenues the carrier received pursuant to its actual rates and the revenues the carrier would have received pursuant to the benchmark rates.

U.S. Cellular supports this approach because it would help to ensure “that universal service does not subsidize carriers with artificially low rates.”¹²² Any funds disbursed to carriers whose rates are artificially low, because the state involved has not rebalanced rates (by increasing previously subsidized residential rates), are funds taken away from other CAF initiatives to promote fixed and mobile broadband deployment. Applying a rate benchmark, therefore, would not only encourage states to engage in rate balancing, but would also provide the Commission with a greater level of funding resources to support broadband networks in rural America.

If the Commission adopts an overall capped budget for CAF funding¹²³—which U.S. Cellular believes would be ill-advised¹²⁴—then the Commission has a heightened responsibility

¹²⁰ *Notice* at 7.

¹²¹ Ad Hoc Comments at 54.

¹²² *Notice* at 7 (footnote omitted).

¹²³ The Commission has sought comment on an overall budget for CAF “such that the sum of any annual commitments for the CAF and any existing high-cost programs (as modified) in 2012 would be no greater

to act comprehensively and effectively to remove unwarranted subsidies that distort and hamper the efficiency of the current USF system. Using a rate benchmark to reduce unwarranted subsidization of local rates for voice service would be one means of meeting this responsibility. Even if the Commission decides to reject proposals for rigid budgetary constraints on support for fixed and mobile broadband deployment, sound policy would still favor the use of rate benchmarks to curb the oversubsidization of incumbent LECs' voice services.

I. Implementing Reform Within a Defined Budget (Public Notice, Section I.H.).

■ ***Is the Transition Proposed by the ABC Plan Reasonable and Workable?***

The ABC Plan recommends a transition period for phasing down existing universal service funding that would begin on July 1, 2012, and be completed on July 1, 2016, when the CAF would be fully funded.¹²⁵ At the same time, the ABC Plan would phase in potential CAF support, including potential access recovery associated with intercarrier compensation reform.¹²⁶

U.S. Cellular conceptually supports the ABC Plan's recommendation, with the caveat noted above that a five-year phase down should be accomplished over five years, not four years as is the current mechanism.¹²⁷ An advantage of the ABC Plan's approach, as U.S. Cellular un-

than projections for the current high-cost program, absent any rule changes." *CAF NPRM*, 26 FCC Rcd at 4647 (para. 275).

¹²⁴ See U.S. Cellular Comments at 66-67.

¹²⁵ The *Public Notice* indicates that the ABC Plan "recommends a five-year transition for phasing down legacy funding" *Notice* at 9. It appears, however, that the ABC Plan proposes a four-year phase-down for price cap ETC and competitive ETC high-cost support, ABC Plan at 8-9, and a five-year transition to a default terminating ICC rate of \$0.0007. ABC Plan at 10.

¹²⁶ See *Notice* at 9 (citing ABC Plan, Attach. 1, at 8-9).

¹²⁷ U.S. Cellular has described a similar transition mechanism for use in connection with its proposed USF mobility cost model:

The Commission should continue under the existing mechanism until a model is developed and fully vetted. Once a model is developed, support should begin to transition to the new mechanism approximately one year after its adoption, to provide carriers with an

derstands it, is that legacy support currently received by competitive ETCs would not be reduced until new CAF funding mechanisms have been implemented and begin to disburse funds to eligible recipients. The ABC Plan provides that “[i]f an existing ETC elects to participate in the CAF, its support in a given year will be the higher of (1) the support available from the CAF; or (2) any remaining legacy support for which the ETC is eligible, calculated at the holding company level.”¹²⁸

U.S. Cellular has stressed that the Commission, “as a means of advancing its goals for the accelerated deployment of mobile broadband networks and for the availability of affordable mobile broadband services in rural communities,”¹²⁹ should “ensure that a phase down of competitive ETCs’ existing high-cost support is not commenced until replacement funding mechanisms have been adopted and have been made operational.”¹³⁰

By proposing such a mechanism, the ABC Plan recognizes that such an approach is necessary to avoid the risk that there is not sufficient funding for the accelerated deployment of broadband networks. Any transition mechanism that breaks the link between phased down support and the disbursement of new support would adversely affect “competitive ETCs because their ability to continue using USF support to deploy infrastructure and provide services would be disrupted. . . . Cutting back current high-cost support would likely decrease investment by

appropriate period of time to prepare, and to permit states adequate time to designate new CETCs in high-cost areas where no carrier is designated as an ETC. Support would migrate to the new program in phases, as carriers elect support based on the model, with the new mechanism fully implemented within five years.

Letter from David A. LaFuria, Counsel to U.S. Cellular, to Marlene H. Dortch, FCC, WC Docket No. 05-337 *et al.* (filed July 29, 2011) (“U.S. Cellular July 29 Ex Parte”), at 6.

¹²⁸ ABC Plan, Attach. 1, at 9.

¹²⁹ U.S. Cellular Comments at 59.

¹³⁰ *Id.*

competitive ETCs in rural and high-cost areas, delay network upgrades, and adversely affect competitive ETCs' coverage areas.”¹³¹

In addition, the ABC Plan's proposal appears intended to work in a competitively and technologically neutral manner, as between price cap ETCs and competitive ETCs. The ABC Plan, of course, does not address transition rules that should apply to rural LECs, but U.S. Cellular endorses application of the ABC Plan to rural LECs so that the transition to CAF funding mechanisms would work in a neutral manner as to *all funding recipients*. U.S. Cellular has been critical of the transition proposed by the Commission in the *CAF NPRM* because, while proposing a complete phase-down of competitive ETC funding, “the Commission has not proposed any plans for a parallel phase-down of high-cost funding currently received by rural incumbent LECs.”¹³² U.S. Cellular favors a transition that “afford[s] all ETCs with comparable opportunities and expose[s] all ETCs to comparable risks.”¹³³

■ ***Should the Commission Adopt Measures Proposed in the Joint Letter That Would Purportedly Keep CAF Support Totals Within a Defined Budget?***

The Joint Letter proposes “to constrain the size of the total high cost fund within a \$4.5 billion per year budget”¹³⁴ during a budget period beginning in 2012 and ending in 2017. A key component of the “consensus framework” reflected in the Joint Letter¹³⁵ is a proposal “that, for the budget period, the Commission establish an annual funding target for its mobility objectives of up to \$300 million. This amount could be phased in to help stay within the budget.”¹³⁶

¹³¹ *Id.* at 60.

¹³² *Id.* at 14.

¹³³ *Id.*

¹³⁴ Joint Letter at 2.

¹³⁵ *Id.* at 1.

¹³⁶ *Id.*

U.S. Cellular addresses elsewhere in its Comments the advisability of dedicating only a small portion of a \$4.5 billion annual CAF budget to “mobility objectives.”¹³⁷ The question here, as posed by the Commission in the *Public Notice*, involves the implications of “phasing in funding for mobility”¹³⁸ in order to ensure that overall CAF disbursements stay within a defined budget over a specified period.¹³⁹

The implications, from the perspective of consumers throughout rural America, are not encouraging. *First*, as a threshold matter, the proposal for a defined budget made in the Joint Letter is similar to the Commission’s proposal to cap funding for the first phase of CAF “such that the sum of any annual commitments for the CAF and any existing high-cost programs (as modified) in 2012 would be no greater than projections for the current high-cost program, absent any rule changes.”¹⁴⁰ The Commission could better serve its universal service goals by refraining from imposing any budgetary restrictions during the first phase of CAF and instead continuing to provide support under its current universal service program rules.¹⁴¹ The same criticism applies to the defined budget proposed in the Joint Letter, because continuing with current funding mechanisms during the transition would better serve consumers by enhancing continuity, and mitigating any dislocations, in the deployment of broadband infrastructure and provision of services in rural and high-cost areas.¹⁴²

¹³⁷ See Section III.A., *supra*.

¹³⁸ *Notice* at 9.

¹³⁹ The Joint Letter suggests that the \$300 million funding target for mobility objectives “could be phased in to help stay within the budget.” Joint Letter at 2.

¹⁴⁰ *CAF NPRM*, 26 FCC Rcd at 4647 (para. 275).

¹⁴¹ U.S. Cellular Comments at 66.

¹⁴² *Id.*

Second, U.S. Cellular has also argued that, if the Commission does opt to establish a defined budget,¹⁴³ then “the budget should not be locked in place, but should instead be flexible and subject to adjustment. As a general matter, allowing pre-determined budget ceilings to drive the extent of the Commission’s efforts to support broadband deployment amounts to allowing the tail to wag the dog.”¹⁴⁴ The framework suggested in the Joint Letter appears to reject such an approach, and instead to endorse limiting “the total high-cost fund” to a \$4.5 billion annual budget.¹⁴⁵ The only budgetary flexibility apparent in the Joint Letter appears to apply only in the case of rate-of-return carriers:

¹⁴³ It is instructive to note that there is support in the record of this proceeding for not establishing any budget cap on high-cost and CAF funding. Significantly, the RLEC Plan argues that “[t]here is . . . a fundamental inconsistency between the directives in the Act and the insistence that the size of the USF cannot increase. . . . [T]he law does *not* state that there cannot be any growth in the size of the USF.” RLEC Plan at 89. The RLEC Plan captures the dilemma posed by the proposal to impose a budget cap:

[T]he Commission must balance between its desire to minimize contribution burdens imposed on households nationwide and the need to avoid detrimental impacts on rural consumers as well as achieving reasonable comparability between rural and urban areas. Tomorrow’s broadband networks cannot be built on a crumbling foundation of today’s narrowband revenues. At some point, the Commission must confront the fact that high-cost support at current levels will not provide sufficient funding to accomplish the nation’s broadband goals. Rather than balance competing goals, the scale is presently tipped, such that concerns over fund constraints far outweigh overarching national deployment goals and very clear legislative directives regarding what the USF is expected to achieve.

Id. at 90.

¹⁴⁴ *Id.* U.S. Cellular also has proposed that the Commission, as part of its transformation of universal service support mechanisms, establish a separate mobile broadband fund with an annual budget of at least \$1.3 billion (approximately the size of competitive ETC high-cost support disbursements, capped at 2008 levels). *See* U.S. Cellular July 29 Ex Parte at 5, *cited in Notice* at 2, n.5. U.S. Cellular has explained that funding level of at least \$1.3 billion is appropriate because, “[w]hile the wireline network will still be robust, landline POTS will be dramatically lower and more support should be shifted to mobile wireless platforms that consumers are switching to.” *Id.* U.S. Cellular has also stressed that, if the Commission establishes two CAF funds, then “[s]upport should be portable, so that the carrier that serves the customer gets the support, which provides appropriate incentives to deliver high quality service. Separate funds permit portability, which the Commission has always stated to be a core component of competitive neutrality” *Id.*

¹⁴⁵ Joint Letter at 2.

The framework proposes that the Commission establish an annual funding target for areas served by rate-of-return carriers that begins at \$2 billion and, to the extent necessary to help ensure sufficient funding, increases by \$50 million per year (i.e., increasing to \$300 million, or a total annual budget target of \$2.3 billion, in the sixth year) to enable access restructuring, promote further broadband build-out (but only to the extent supported by increases in universal service/CAF funding above current levels), and provide a reasonable opportunity to recover the costs associated with existing investments in broadband-capable plant. This potential incremental funding for rate-of-return carriers would not be available to other providers.¹⁴⁶

This seems to suggest that the per-year budget could increase (raising the total high-cost fund in the sixth year from \$4.2 billion to \$4.5 billion), in order to accommodate broadband deployment by rate-of-return carriers. While U.S. Cellular supports budgetary flexibility, it clearly would not be consistent with Commission universal service principles to exercise such flexibility in the one-sided manner proposed in the Joint Letter.

And, *third*, the self-serving nature of the Joint Letter's budget proposals is further underscored by the suggestion in the Joint Letter that amounts available for mobile broadband deployment "could be phased in to help stay within the budget."¹⁴⁷ As U.S. Cellular has noted in these Comments, and in numerous other pleadings, the Commission has explicitly indicated that a key component of its transformed universal service funding mechanisms should be the facilitation of high-speed mobile broadband in rural areas.¹⁴⁸ Pursuit of this goal would not be accommodated by the approach suggested in the Joint Letter. The implication of that approach is that mobile broadband deployment would be relegated to the sidelines while funding budgets could

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ The Commission has emphasized that "there remain many areas of the country where people live, work, and travel that lack mobile voice coverage, and still larger geographic areas that lack current generation mobile broadband coverage." *Notice*, 26 FCC Rcd at 4638 (para. 241), *cited in* U.S. Cellular Comments at 5.

be increased to fund the fixed broadband deployment plans of rate-of-return carriers. Such a policy would not serve the Commission's broadband deployment and pro-competitive goals, the Commission's competitive neutrality principle, or the interests of rural consumers.

J. The Role of the States.

The *Public Notice* seeks comment regarding the role of the states in the context of both universal service and ICC reform,¹⁴⁹ prompting U.S. Cellular to call attention to another aspect of the intersection of the authority of the Commission and state regulatory commissions that is important in evaluating the Commission's reform proposals in the *CAF NPRM*.

Specifically, the Commission has proposed to establish a reverse auction mechanism to award CAF support, and has further proposed that only one carrier would be designated as an auction winner,¹⁵⁰ and thus be made eligible to receive support, in any particular service area. U.S. Cellular has argued previously, and reiterates its position in these Comments, that single-winner reverse auction mechanism would not be consistent with the provisions of Section 214(e) of the Act.

Section 214(e) of the Act¹⁵¹ gives state commissions and the Commission direct authority to designate *more than one ETC* in a service area. If a state commission designates an additional ETC in a given service area, as an exercise of the state commission's authority established in Section 214(e)(2), the purpose and intent of the state commission's designation (as envisioned by the Act, and by the state commission) is that the designated ETC necessarily becomes eligible to participate in the universal service mechanism. As U.S. Cellular has explained, "[a] reverse auc-

¹⁴⁹ *See Notice* at 5, 12-13.

¹⁵⁰ *CAF NPRM*, 26 FCC Rcd at 4648 (para. 281). The Commission also claims to have legal authority to limit CAF support to only one provider per service area. *Id.* at 4645 (para. 264).

¹⁵¹ 47 U.S.C. § 214(e).

tion process, by short-circuiting the designated ETC's opportunity to receive support, would have the effect of canceling out the state commission's Section 214(e)(2) authority. Such a result could not have been intended by Congress.”¹⁵²

IV. INTERCARRIER COMPENSATION REFORM.

A. The ABC Plan's Reform Proposal.

The ABC Plan proposes to phase down per-minute ICC charges to a uniform rate near zero. Specifically, the regulated terminating ICC rates of all carriers (except rate-of-return incumbent LECs) would be phased down to a uniform default rate of \$0.0007 per minute by July 1, 2017. The ABC Plan suggests that its proposed approach is reasonable because “[r]eform of terminating intercarrier compensation rates will advance broadband deployment by reducing the disincentives to deploying IP networks and reducing carriers’ reliance on unstable implicit support mechanisms.”¹⁵³

The Commission’s review of the current ICC system hits the nail on the head: “The inter-carrier compensation system is broken and needs to be fixed.”¹⁵⁴ U.S. Cellular generally supports the repair work proposed in the ABC Plan. The proposal is consistent with the Commission’s commitment “to gradually reduce all per-minute charges.”¹⁵⁵ The Commission has explained that “[p]er-minute charges are inconsistent with peering and transport arrangements for IP networks, where traffic is not measured in minutes[,]”¹⁵⁶ and that “[t]he record suggests that the current ICC system is impeding the transition to all-IP networks and distorting carriers’ incentives to in-

¹⁵² U.S. Cellular Comments at 21-22.

¹⁵³ ABC Plan, Attach. 1, at 9.

¹⁵⁴ *CAF NPRM*, 26 FCC Rcd at 4710 (para. 508).

¹⁵⁵ *Id.* at 4570 (para. 40).

¹⁵⁶ *Id.*

vest in new, efficient IP equipment.”¹⁵⁷ The Commission also has expressed concern that “wasteful attempts to game the system will likely persist as long as ICC rates remain disparate and well above carriers’ incremental costs of terminating a call.”¹⁵⁸

Consumers are disadvantaged by the above-cost pricing of current ICC charges and by the system-gaming tactics criticized by the Commission. The Broadband Plan estimates that the current ICC regime “results in up to \$14 billion in transfers between carriers every year.”¹⁵⁹ T-Mobile estimates that the amounts extracted from carriers are much higher¹⁶⁰ and also points out that “[c]onsumers bear the entire cost of these inequitable, inefficient tolls.”¹⁶¹

Consumers are further harmed by the fact that the current broken system hinders the deployment of mobile broadband networks. As MetroPCS has explained:

[W]ireless carriers are not treated equally in the intercarrier compensation system because they are required to make access payments to others but are unable to receive them. This gives an unfair advantage to wireline services (including CLECs) that wireless carriers do not have and which retards the adoption of wireless as a substitute for wireline services.¹⁶²

The ABC Plan would take a significant step in eliminating these irrational impediments to the adoption of wireless services by establishing a uniform default rate of \$0.0007 per minute. Prescribing a uniform default rate of near zero would bring lower rates as well as other benefits to consumers. As Professor Jerry Hausman has explained, “lower rates for *all* intercarrier compen-

¹⁵⁷ *Id.* See CTIA Comments at 34 (arguing that “[a] rational intercarrier compensation regime is crucial to creating appropriate incentives for providers to invest in infrastructure, deploy broadband networks, and make innovative services available to all Americans”).

¹⁵⁸ *CAF NPRM*, 26 FCC Rcd at 4570 (para. 40).

¹⁵⁹ NBP at 142 (footnote omitted).

¹⁶⁰ T-Mobile Comments, WC Docket No. 10-90 *et al.* (filed Apr. 18, 2011), at 22-23.

¹⁶¹ *Id.* at 23.

¹⁶² MetroPCS Communications, Inc. (“MetroPCS”) Comments, WC Docket No. 10-90 *et al.* (filed Apr. 18, 2011) at 5.

sation will lead to lower prices for consumers, added investment an innovation, or both Lower prices and added investment and innovation lead to increased consumer welfare and increased demand and increased output.”¹⁶³ Professor Hausman indicates that:

Economic analysis demonstrates that lower costs are passed through to consumer prices at a minimum rate of 50%, even for a monopolist. However, as competition increases the percentage of pass-through approaches 100% (and can even be greater than 100%). Empirical economic studies typically find pass-through in competitive industries of approximately 100%, especially when the cost change is common to the entire industry.¹⁶⁴

Professor Hausman concludes that, given the level of competition within the wireless industry and the level of intermodal competition, “I would expect approximately all of any intercarrier compensation rate decreases to be passed through in lower prices, added investment an innovation or both to consumers.”¹⁶⁵ Professor Hausman also quantifies the extent of consumer benefits to be derived from a uniform default rate of near zero, concluding that there would be a consumer welfare gain for cellular subscribers of \$3.82 billion per year, and a gain in consumer welfare from wireline long distance usage of \$4.96 billion per year, for a total gain from both wireless and wireline usage of \$8.77 billion per year.¹⁶⁶

B. Recovery Mechanism (Public Notice, Section II.C.).

■ *Should the Commission’s CAF Transition Plan Include Mechanisms for Access Revenue Recovery Associated with Intercarrier Compensation Reform?*

The ABC Plan proposes a transitional access replacement mechanism “for price cap incumbent LECs that experience exceptionally large reductions in intercarrier compensation reve-

¹⁶³ Hausman Paper at 8 (emphasis in original).

¹⁶⁴ *Id.* at 8-9 (footnotes omitted).

¹⁶⁵ *Id.* at 9.

¹⁶⁶ *Id.* at 12-13.

nue.”¹⁶⁷ The ABC Plan asserts that the proposed transitional access replacement mechanism is needed “to ensure that the intercarrier compensation reforms do not jeopardize the operations of broadband providers that rely on intercarrier compensation revenues for implicit support of networks in high-cost areas.”¹⁶⁸

The *Public Notice* seeks comment on the implications of this proposal.¹⁶⁹ The most salient implication is that the proposal would reserve CAF support for one class of carriers (*i.e.*, price cap incumbent LECs), thus bestowing a substantial competitive advantage upon those carriers in direct contravention of the Commission’s principle of competitive neutrality.¹⁷⁰ In contrast to the approach suggested by the ABC Plan, the Commission, in addressing Interstate Access Support (“IAS”), proposes to transition this support for both competitive ETCs and in-

¹⁶⁷ ABC Plan, Attach. 1, at 12.

¹⁶⁸ *Id.*

¹⁶⁹ *Notice* at 9.

¹⁷⁰ The Commission 14 years ago established the principle that “universal service mechanisms and rules” should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another.” *USF First Report and Order*, 12 FCC Rcd at 8801 (para. 47). To comply with the Act, CAF funding mechanisms must not only be sufficient to maintain and advance universal service, but also must be competitively neutral. *See Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000) (“*Alenco*”). Both the *USF First Report and Order* and the *Alenco* decision also endorse the full portability of universal service funding. The Commission stressed that “[t]he amount of support will be explicitly calculable and identifiable by competing carriers, and will be portable among competing carriers, *i.e.*, distributed to the eligible telecommunications carrier chosen by the customer.” *USF First Report and Order*, 12 FCC Rcd at 8786 (para. 15). The *Alenco* court emphasized that:

The [USF funding] program must treat all market participants equally—for example, *subsidies must be portable*—so that the market, and not local or federal government regulators, determines who shall compete for and deliver services to customers. . . . [T]his principle is made necessary not only by the economic realities of competitive markets *but also by statute*.

Alenco, 201 F.3d at 616 (emphasis added).

cumbent price cap carriers on the same schedule.¹⁷¹ U.S. Cellular has supported that approach, since it would not create any competitive advantage or disadvantage for any class of carrier.¹⁷²

The ABC Plan proposes a measured five-year glide path to its proposed uniform default rate of \$0.0007 per minute.¹⁷³ The proposed transition “is designed to give carriers adequate time to prepare and make adjustments to offset lost revenues.”¹⁷⁴ This proposed timeline should be sufficient to enable price cap carriers to prepare for a new ICC regime that has been a long time in the making.

Adding a further protective layer to this glide path, in the form of CAF access replacement support exclusively available to price cap ETCs, is unnecessary, unwarranted, and incompatible with the Commission’s competitive neutrality principle.¹⁷⁵ The Commission has been emphatic in stating that its universal service policies seek to avoid “the competitive harm that could be caused by providing unequal support amounts to incumbents and competitors. Unequal federal funding could discourage competitive entry in high-cost areas and stifle a competitor’s

¹⁷¹ *CAF NPRM*, 26 FCC Rcd at 4637 (para. 237).

¹⁷² *See* U.S. Cellular Comments at 64-65; U.S. Cellular Reply Comments at 67, n.239.

¹⁷³ Under the ABC Plan’s proposal, “the regulated terminating intercarrier compensation rates of all carriers except rate-of-return incumbent LECs are phased down to a uniform default rate of \$0.0007 per minute by July 1, 2017.” ABC Plan, Attach. 1, at 9.

¹⁷⁴ *Id.* at 10 (citing NBP at 149).

¹⁷⁵ In this regard, U.S. Cellular agrees with the observation made by the Universal Service for America Coalition (“USA Coalition”) that:

“[K]eep-whole” proposals . . . make no sense in terms of keeping fund size at a constant level or transitioning to a transparent mechanism that is tied directly to cost. Indeed, keep-whole measures only mask problems in existing carriers’ cost structures and kick[] the reform can down the road. . . . The Commission cannot justify keeping a certain class of carriers “whole” during ICC reform in light of the statutory goals for the universal service program, including competitive neutrality.

USA Coalition Comments, WC Docket No. 10-90 *et al.* (filed Apr. 18, 2011), at 22-23 (footnote omitted).

ability to provide service at rates competitive to those of the incumbent.”¹⁷⁶ Creating an explicit mechanism dedicated to one technology surely denies alternative providers the opportunity to put those funds to use building networks—in U.S. Cellular’s case—new cell sites.

U.S. Cellular also supports a close examination of wireline carrier retail pricing structures to ensure that high-cost support does not drive retail prices to artificially low levels. A benchmark rate should be set so that a carrier’s actual or imputed rate establishes the level above which support can be provided.

Finally, the Commission should reject unsupported statements that carriers “rely” on universal service mechanisms to stay in business. Such statements, without some quantification, cannot form the economic rationale to create exclusive revenue streams for companies that are so obviously profitable.

V. CONCLUSION.

U.S. Cellular respectfully requests the Commission, as it pursues the transformation of its universal service and intercarrier compensation policies and rules, to take several actions that will promote the rapid and ubiquitous deployment of broadband networks, including mobile wireless broadband networks, throughout rural America.

These actions should include the adoption of separate funding mechanisms for wireline broadband and mobile broadband networks, the provision of sufficient funding for each of the separate support mechanisms, the use of a forward-looking economic cost model for the dis-

¹⁷⁶ *USF Ninth Report and Order*, 14 FCC Rcd 20432, 20480 (para. 90). See *Federal-State Joint Board on Universal Service; Promoting Deployment of Subscriber in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking 15 FCC Rcd 12208, 12264-65 (para. 114) (2000) (finding that “competitively neutral access to . . . [universal service] support is critical to ensuring all Americans, including those that live in high-cost areas, have access to affordable telecommunications”).

bursement of support through the Commission's new funding mechanisms, and requiring the full portability of funding within each mechanism.

Respectfully submitted,

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EXHIBIT 1

ADULTS AND CHILDREN WITH WIRELESS SERVICE ONLY

Adults and Children with Wireless Service Only

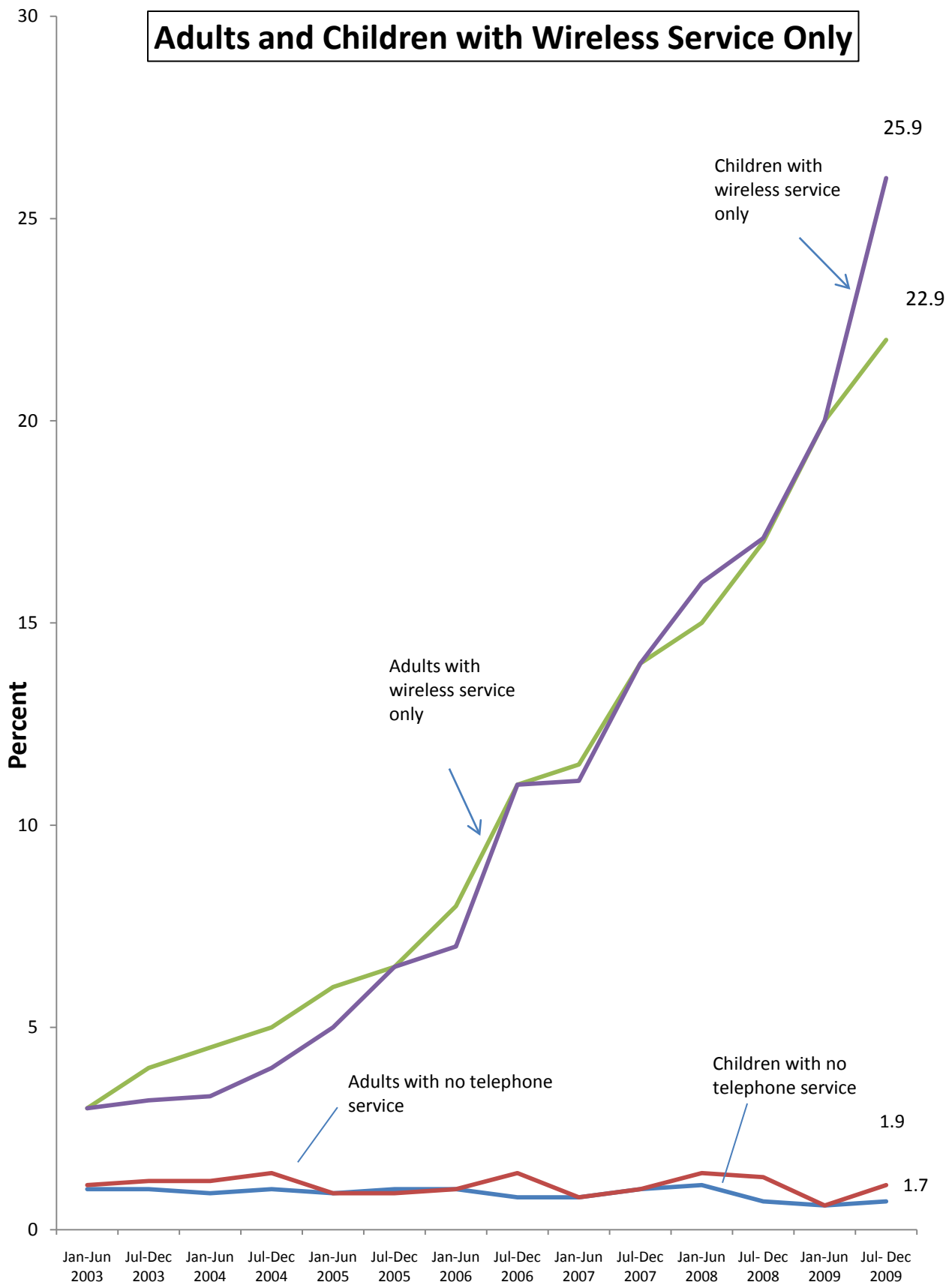


EXHIBIT 2

DOWNWARD TREND IN TDM ACCESS LINES

Downward Trend in TDM Access Lines

US Facilities-Based Service Providers (Residential Access)

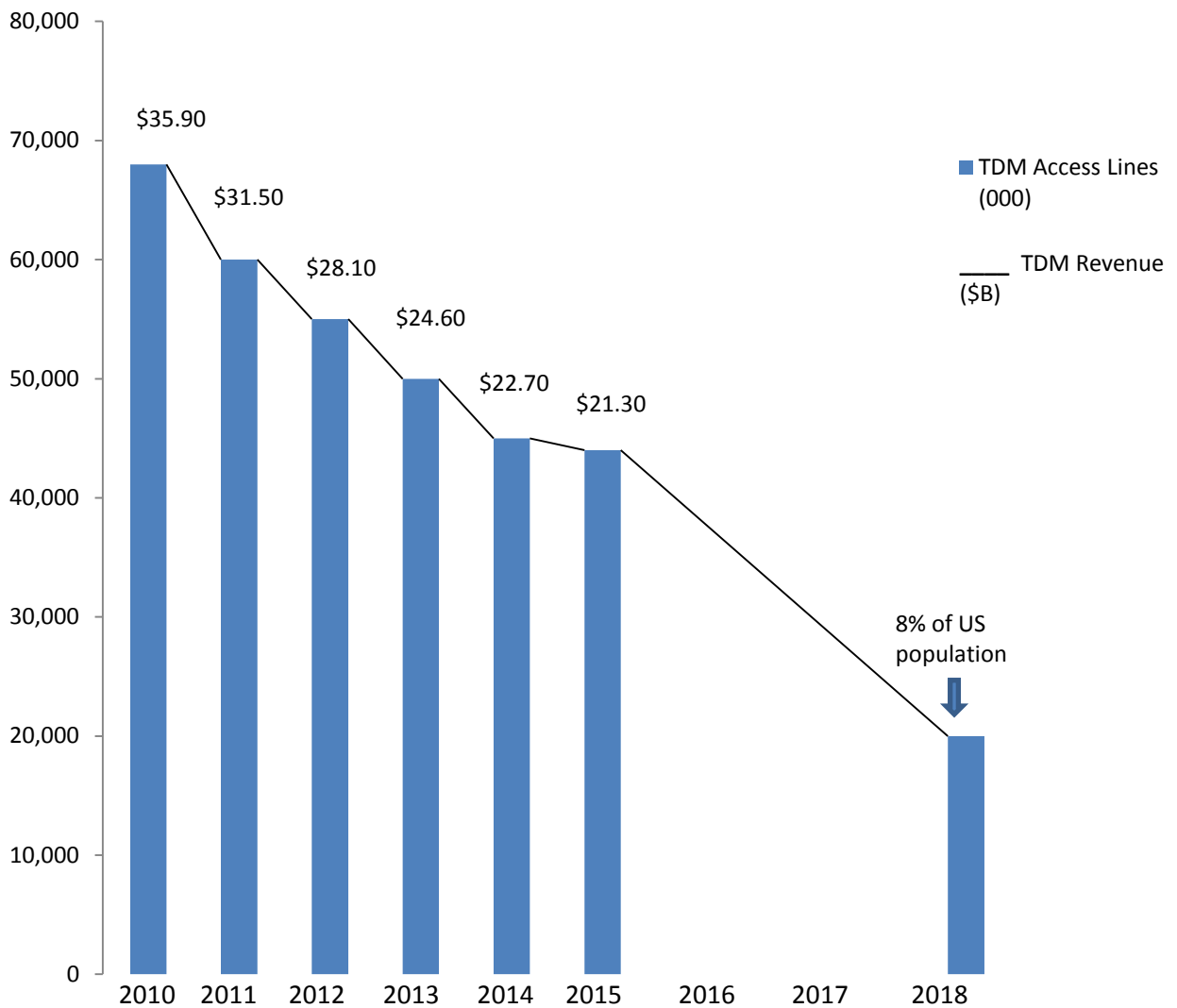
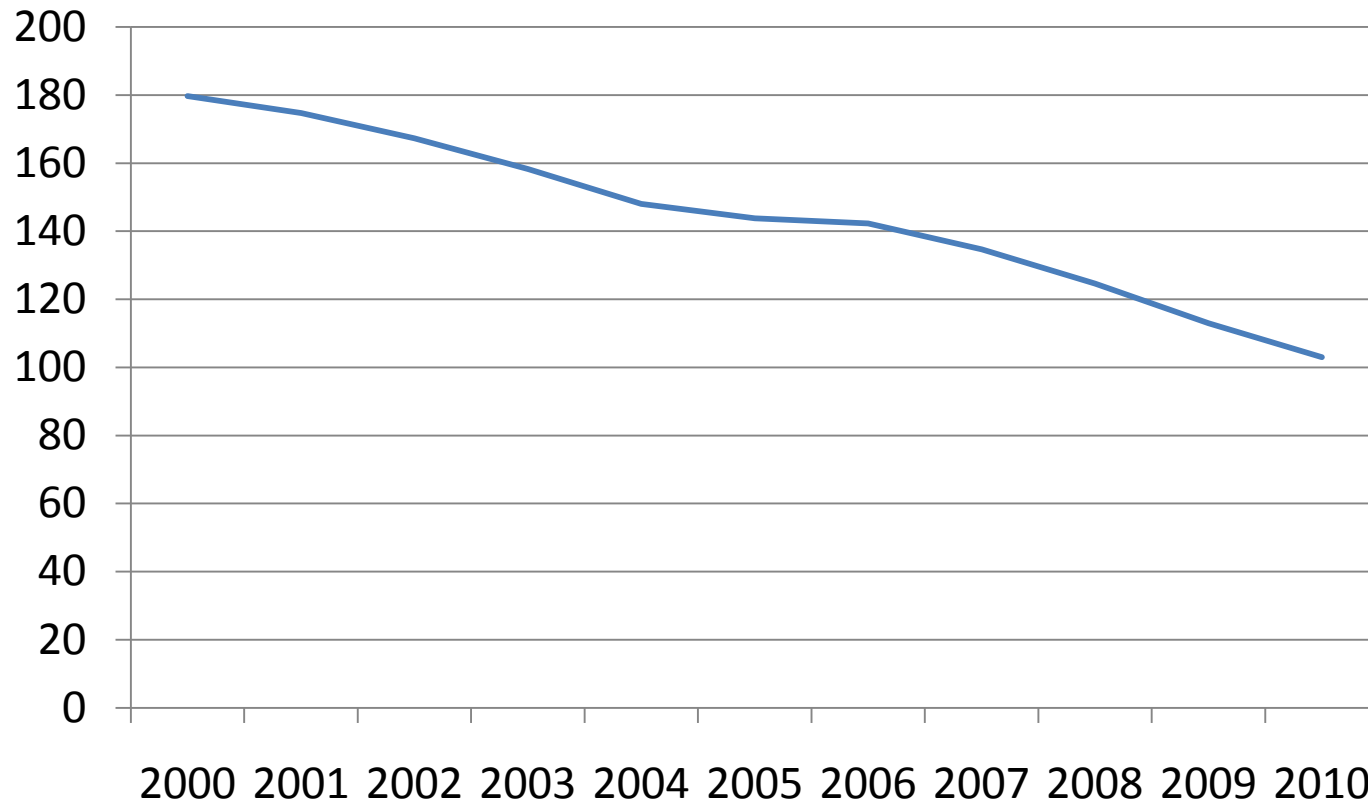


EXHIBIT 3

**ILEC SUPPORT, 2001-2010
ILEC ACCESS LINES, 2000-2010**

ILEC Access Lines, 2000-2010

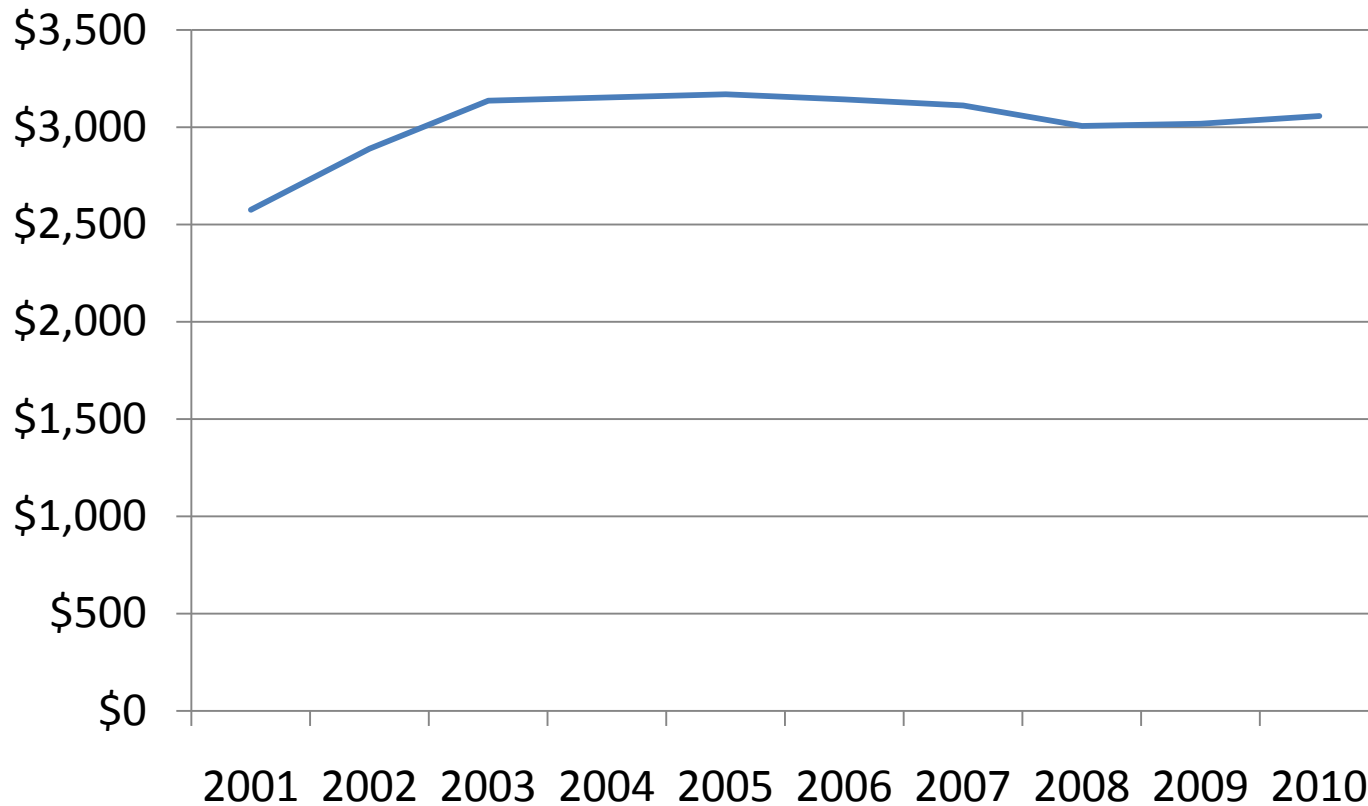
(in millions)



Source: Local Telephone Competition: Status as of June 30, 2010 at Tables 1, (IATD, WCB March 2011) .

ILEC Support, 2001-2010

(in millions)



Source: 2010 Universal Service Monitoring Report at Table 3.2.